

Supreme Court, D. C.
FILED

AUG 14 1976

MICHAEL RODAK, JR., CL

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. **76-222**

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*,

No.

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K.
BLAUSTEIN and RUTH B. ROSENBERG,
SURVIVING EXECUTRICES, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Of Counsel:

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

CABLE, McDANIEL, BOWIE
and BOND
915 The Blaustein Building
Baltimore, Maryland 21201

CAROLYN E. AGGER
WALTER J. ROCKLER
LAURALEE A. MATTHEWS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

JOHN S. McDANIEL, JR.
LAWRENCE A. KAUFMAN
915 The Blaustein Building
Baltimore, Maryland 21201

Attorneys for Petitioners

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTE AND REGULATIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	
SUMMARY	8
I. THE DECISION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT DIRECTLY CONFLICTS WITH DECISIONS OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT	
A. Refusal to Consider Factors Depressing Hypothetical Sale Value	9
B. Failure to Utilize Market Quotations in Valuing Crown Stock	12
II. THE PROPER DISPOSITION OF THIS CASE INVOLVES AN IMPORTANT QUESTION OF LAW WHICH SHOULD BE SETTLED BY THIS COURT	15
III. THE COURT BELOW DECIDED THE BASIC ISSUE PRESENTED IN A WAY WHICH IS CONTRARY TO THE PRINCIPLES ESTABLISHED BY THIS COURT IN ANOTHER CONTEXT	16
CONCLUSION	17

	Page
CASES:	
Amerada Hess Corp. v. Commissioner, 517 F.2d 75 (3rd Cir. 1975), <i>cert. denied</i> , 423 U.S. 869, 96 S. Ct. 574 (1975)	8, 13, 14, 17
Bishop Trust Company v. United States, 42 A. F. T.R. 1221 (D. Hawaii 1950)	10, 16
Estate of Maurice Gustave Hecksher, 63 T.C. 485 (1975)	10, 15
Estate of Alvin Thalheimer, 33 T.C.M. 877 (1974) ...	2, 12
Edwin A. Gallun, 33 T.C.M. 1316 (1974)	15
Hazeltine Corporation v. Commissioner, 89 F.2d 513 (3d Cir. 1937)	8, 13, 17
Ivan Allen Company v. United States, 422 U.S. 617 (1975)	8, 16, 17
Laird v. Commissioner, 85 F.2d 598 (3rd Cir. 1936) ...	8, 9, 10, 16, 17
Obermer v. United States, 238 F. Supp. 29 (D. Hawaii 1964)	10, 16
Powers v. Commissioner, 312 U.S. 259 (1941)	15

STATUTES AND REGULATIONS:

United States Code

Title 26	
Secs. 531-37	16
Sec. 2031	3
Title 28	
Sec. 1254(1)	2

Code of Federal Regulations	Page
Title 17	
Sec. 210.6-02(f) (2)	11
Sec. 210.6-02(i)	11
Sec. 210.6-03-23	11
Sec. 270.2a-4	11
Title 26	
Sec. 20.2031-1(b)	2, 3, 10, 11
Sec. 20.2031-2(a)	3
Sec. 20.2031-2(b)	3, 13
Sec. 20.2031-2(c)	3
Sec. 20.2031-2(e)	3, 15
Sec. 20.2031-2(f)	3, 10, 11, 15
OTHER AUTHORITIES:	
Bills, <i>Reduction in Value of Closely Held Stocks Due to Income Tax Liabilities</i> , 44 Taxes 487 (1966) ...	11
SEC Accounting Series Release No. 113 (Investment Company Act Release No. 5847) October 21, 1969.	12
SEC Accounting Series No. 116 (Investment Company Act Release No. 6026) April 13, 1970	12

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No.

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*,

No.

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K.
BLAUSTEIN and RUTH B. ROSENBERG,
SURVIVING EXECUTRICES, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit finally entered in this proceeding on May 24, 1976.

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court are reported at 33 T.C.M. 877 (August 5, 1974) and are reprinted in Appendix A hereto,¹ at pp. 1a-70a. The decisions of the Tax Court stating its deficiency determinations were entered December 18, 1974, and are reprinted at App. B., pp. 71a-73a. The opinion of the Court of Appeals, which is not yet officially reported, is reprinted at App. C., pp. 74a-75a. The order of the Court of Appeals, denying a petition for rehearing, was issued May 24, 1976 and filed May 26, 1976, and is reprinted at App. D., p. 76a.

JURISDICTION

The initial judgment of the Court of Appeals was entered on April 13, 1976. A timely petition for rehearing was filed on April 27, 1976, and was denied on May 24, 1976. This petition for certiorari is filed within 90 days of the latter date. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

The amount of Federal Estate Tax payable by a decedent's estate varies directly with the fair market value² of the estate's assets, *i.e.*, the amount which could be realized from a sale. In the present cases, each of the estates consisted largely of stock in a closely-held corporation, which itself held large blocks of stock in

¹ The separate Appendix to this petition is hereafter cited as "App."

² The regulations provide that "the value of every item of property . . . is its fair market value . . . [which] is the price at which the property would change hands between a willing buyer and a willing seller. . . ." Treas. Regs. Sec. 20.2031-1(b).

publicly traded corporations. The parties and both courts below agreed that a determination of the value of the closely-held corporation stock owned by the decedents would depend in large part on the value to the closely-held corporation of the blocks of stock owned by it and that therefore it was necessary to determine the fair market value of such blocks.

The questions presented are whether in making these determinations:

1. As a matter of law, must factors, such as blockage, restrictions on resale and potential capital gains taxes, all of which would both reduce the net amount actually realizable from a sale and would necessarily be taken into account by a potential buyer of the closely-held corporation stock, be disregarded solely because the closely-held corporation did not contemplate making an immediate sale of the blocks owned by it.
2. As a matter of law, may the prices at which the listed stock of one of the corporations was traded on the stock exchange be completely ignored in determining fair market value.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved in this case are Section 2031 of the Internal Revenue Code of 1954 (26 U.S.C. Sec. 2031) and Sections 20.2031-1(b) and 20.2031-2(a), (b), (c), (e), and (f), of the Treasury Regulations on Estate Tax (26 C.F.R. Secs. 20.2031-1(b) and 20.2031-2(a), (b), (c), (e), and (f)). These provisions are set forth at App. E, pp. 77a-80a.

STATEMENT OF THE CASE

These two consolidated cases involve alleged Federal estate tax deficiencies of more than \$1 million. The Court of Appeals affirmed *per curiam* the Tax Court's deficiency determinations.³

The sole issue presented to the Tax Court in each case was the value of decedents' stockholdings in a closely-held corporation, American Trading and Production Company (hereafter "Atapco"). The parties and the Courts below agreed that this issue required a determination of Atapco's net asset value (*i.e.*, the fair market value of its assets less liabilities) which, in turn, required a determination of the fair market value of Atapco's very large stockholdings in publicly traded companies.⁴

At the time of decedents' deaths, Atapco held large blocks of stock of several public companies, including Standard Oil of Indiana ("Indiana"); Standard Oil of New Jersey ("Jersey"); Crown Central Petroleum Corporation ("Crown"); United States Fidelity and Guaranty Corporation ("U.S.F.&G."); and Union Trust Company of Maryland ("Union Trust"). (R.12-19.)⁵

³ The Tax Court determined the following deficiencies: *Estate of Alvin Thalheimer* (date of death, July 8, 1965), \$676,349.71; *Estate of Henrietta G. Blaustein* (date of death, December 8, 1965), \$481,228.02. (App. B. pp. 71a-73a.) The Court of Appeals affirmed but ordered a remand to correct an error favoring the Government (to which a relatively small amount of tax was attributable).

⁴ The parties stipulated the net asset values of Atapco's several operating divisions. The issue of how much the value of decedents' Atapco stock was less than an aliquot portion of Atapco's net asset value is not presented in this petition for certiorari.

⁵ "R." designates references to the Joint Appendix filed in the Court of Appeals.

All of these stockholdings were affected by factors which would limit the net amount which Atapco could realize from a sale to a willing buyer, the only proper criterion for determining the value of such holdings for tax purposes. Atapco's Indiana, Crown and Union Trust holdings were particularly large.⁶ The petitioners' expert witness, Mr. Alvin Friedman of Kuhn, Loeb & Co., presented undisputed testimony in the Tax Court that those holdings were subject to blockage and could not have been sold in a reasonable period of time without reducing the selling price per share substantially below the prevailing market prices for small lots of Indiana, Crown and Union Trust stock. Mr. Friedman also presented undisputed testimony that the sale of Atapco's holdings in Indiana, Crown and Union Trust was subject to serious restrictions under the Federal Securities laws. (R. 55-57, 545e-548e.)

In addition to the restrictions affecting Atapco's freedom to sell its Indiana, Crown and Union Trust holdings, Atapco had an extremely low basis in almost all of its stockholdings and could not have sold its holdings without incurring substantial capital gains tax, which would further have reduced the amounts realizable from the sales by Atapco. (R. 56-57; 545e-549e.)

Mr. Friedman further testified that a buyer of Atapco shares would take into account the restrictions and conditions which would depress the value of Atapco's main assets and would also take into account the capi-

⁶ Atapco was the largest single Indiana shareholder in 1965, with 2.94% of the total 70,794,742 shares outstanding. Atapco held 48.8% of outstanding Crown stock in 1965. Atapco owned 28,710 shares of Union Trust which was approximately 5% of the total shares outstanding.

tal gains tax which would reduce the amounts realizable from a sale by Atapco. (R. 56-57;71; 545e-549e.)

The Government presented no evidence in the Tax Court to refute Mr. Friedman's conclusions that blockage, Federal Securities law restrictions and capital gains taxes would reduce the amount Atapco could realize from a sale of its stockholdings and that a potential buyer of Atapco stock would take these adverse factors into account in negotiating a price. However, the Government's witness, Mr. O'Farrell (an I.R.S. employee), asserted that factors depressing the net amounts realizable on a sale of Atapco's stockholdings should not be considered in determining Atapco's net asset value, because Atapco was a "going concern" not contemplating an immediate sale of its assets. Without ever testifying as to what effect such depressing factors would have had on the price which a willing buyer would have been prepared to pay for Atapco's stock, Mr. O'Farrell simply proceeded to value Atapco's holdings in public companies (except Crown) at the prices prevailing in the market for unrestricted small lots of stock in those companies, without adjustment to reflect the factors, expenses and tax costs which would reduce the value of Atapco's large holdings. (R. 617e-643e.)

In the case of Atapco's Crown stockholdings, Mr. O'Farrell not only failed to adjust stock market prices downward to reflect the factors which would reduce what Atapco could realize, but he completely disregarded the quoted prices of Crown stock on the American Stock Exchange. He valued Atapco's large, restricted block of Crown stock at book value, more than twice the quoted market price for unrestricted shares, asserting that the market for Crown stock was "thin." (R. 101-102, 617e-643e.) However, the stipulated, undisput-

ed evidence showed that trading in Crown stock was as heavy at the valuation dates as trading in Jersey or Indiana stock, for which Mr. O'Farrell used quoted market prices without any concern for a "thin" market. (R. 12, 15-16, 190e-191e, 235e-240e, 277e-278e; Pet. Br. 37-39.)⁷

The basic issue presented to the Tax Court was whether under proper standards for valuation the undisputed blockage, restrictions on sales and tax costs, all of which would have substantially reduced the amount Atapco could have realized from a sale of its stockholdings, should be considered in determining Atapco's net asset value and, therefore, in determining the fair market value of the Atapco stock owned by the decedents. A subsidiary issue was whether Crown stock could be valued without any regard to its quoted stock exchange prices.

The Tax Court held as a matter of law that, solely because no sale was imminent, the factors which would reduce the amount Atapco could realize from a sale could not be considered in determining the net asset value of Atapco stock.⁸ In addition, the Tax Court held that stock of Crown should be valued in Atapco's hands at book value, which was more than twice the price for that stock established in market trades on the valuation dates.

⁷ "Pet. Br." refers to the petitioners' brief filed in the Court of Appeals.

⁸ However, the unlikelihood of imminent sales did not prevent the Tax Court from accepting Mr. O'Farrell's use of market prices for sales of small unrestricted lots to value Atapco's large, restricted stockholdings.

The Court of Appeals for the Fourth Circuit affirmed the Tax Court's decision *per curiam* and thus sanctioned the above conclusions of law by the Tax Court, notwithstanding that Chief Judge Haynsworth had noted during the oral argument that, since the value of property is defined as "market value," a definition which requires the assumption of a hypothetical sale, he had "grave problems" with the Government's position that factors relevant to sale value can be disregarded in estate tax valuation merely because no actual sale of property appears imminent. The Court of Appeals also sanctioned the Tax Court's valuation of Crown stock without any regard to quoted market prices.

REASONS FOR GRANTING WRIT

Summary

The Court of Appeals' decision conflicts squarely with decisions of the Court of Appeals for the Third Circuit. *Laird v. Commissioner*, 85 F.2d 598 (3d Cir. 1936); *Amerada Hess Corporation v. Commissioner*, 517 F.2d 75 (3d Cir. 1975), *cert. denied*, 423 U.S. 869, 96 S. Ct. 574 (1975); *Hazeltine Corporation v. Commissioner*, 89 F.2d 513 (3d Cir. 1937).

The decision of the Fourth Circuit and the conflicting decisions of the Third Circuit involve an important area of law as to which this Court has not directly addressed itself and which should be settled by this Court.

The decision of the Fourth Circuit is also in conflict with the principles enunciated by this Court in *Ivan Allen Co. v. United States*, 422 U.S. 617 (1975), that for tax purposes securities owned by corporations should be valued at the net amounts realizable from

their sale rather than on other bases having no economic reality.

I.

THE DECISION OF THE COURT OF APPEALS FOR THE FOURTH CIRCUIT DIRECTLY CONFLICTS WITH DECISIONS OF THE COURT OF APPEALS FOR THE THIRD CIRCUIT.

A. Refusal to Consider Factors Depressing Hypothetical Sale Value

The Tax Court held as a matter of law that, regardless of the effect in the market of blockage, restrictions on sale, tax costs and other factors affecting the hypothetical sale value of Atapeco's assets, these elements could not be considered in valuing Atapeco stock because an immediate sale of the assets was not contemplated. (App. A, p. 67a.) The Court of Appeals' *per curiam* affirmance sanctioning this decision conflicts directly with the decision of the Court of Appeals for the Third Circuit. In *Laird v. Commissioner*, 85 F.2d 598 (3d Cir. 1936), the Third Circuit Court reversed the Board of Tax Appeals for its failure to consider the effect of blockage and other restrictive factors on the market value of stocks held by close corporations, in determining the value of the latter corporations. No sales of the stocks by the close corporations was there contemplated. Nonetheless, the Third Circuit Court stated that the Board's method, which failed to take account of factors that would affect a hypothetical sale by the holding corporations—

"[N]ot only ignored the treasury regulations prescribing the method by which stock in close corporations should be valued, but directly violated these regulations. Stock in such a [close] corporation must not be valued 'by taking the mean

between the highest and lowest quoted selling prices' of the stock constituting the assets of the corporation to determine the worth of the company. . . . *The stock in these two close corporations could not have been sold on the day of Mr. Laird's death, for no one could have forced the sale of all the stock constituting the assets of the [corporations]. . . . Even if it could have been done, . . . the testimony was that it would have driven the price of the du Pont stock [held by the corporations] down from \$325 to \$125 per share.* That of course was a guess, but it shows that the method which the Board used was impractical when applied to the determination of the value of the assets of close corporations which consist entirely of stock listed on stock exchanges. . . ." 85 F.2d at 601 (emphasis supplied).

Other courts have followed the Third Circuit Court's approach and have considered the effect on asset value of factors such as blockage and capital gains taxes in valuing closely-held corporations, even though there was no indication that the corporate assets were about to be sold. *E.g., Obermer v. United States*, 238 F. Supp. 29 (D. Hawaii 1964); *Bishop Trust Company v. United States*, 42 A.F.T.R. 1221 (D. Hawaii 1950). The Tax Court itself, in a more recent case, took account of the effect of trapped capital gains tax in valuing the stock of a holding company. *Estate of Maurice Gustave Hecksher*, 63 T.C. 485, 495 (1975).

The Third Circuit Court's *Laird* decision and the cases following the *Laird* approach properly interpret Treasury Regulations Section 20.2031-2(f)(2),⁹ which

⁹ *Laird* interpreted Treasury Regulations 70, Art. XII under Section 302 of the Revenue Act of 1926. Those Regulations were substantially identical to the successor, present Treasury Regulations Section 20.2031-2(f)(2) and 20.2031-1(b) under Section 2031 of the Internal Revenue Code of 1954.

requires that the net worth, or net asset value, of every closely-held company be determined for valuation purposes, regardless of whether the corporation is a going concern. Net asset value is by definition a measure in which "the hypothesis of a sale forms the basis of value." Bills, *Reduction in Value of Closely Held Stocks Due to Income Tax Liabilities*, 44 Taxes 487, 489 (1966) (emphasis supplied).

The requirement of Regulations Section 20.2031-2(f)(2), that the net asset value of a corporation be determined on the basis of a hypothetical sale of its assets, is a specific application of the basic principle of the Regulations that—

"The value of every item of property includable in a decedent's gross estate . . . is its fair market value. . . . [F]air market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." Treas. Regs. Sec. 20.2031-1(b).

Any potential purchaser of the stock of a corporation whose primary value resides in its holdings of stock of other companies would consider, among other factors, the net value available to the corporation from a sale of its holdings for its corporate purposes. Thus, the SEC rules for publicly traded investment companies require all factors affecting the hypothetical sale value of an investment company's stockholdings to be disclosed. Specifically, the SEC requires the disclosure of trapped capital gains (17 C.F.R. Secs. 210.6-02(f)(2), 210.6-02(i); 17 C.F.R. Sec. 210.6-03-23 and 17 C.F.R. Sec. 270.2a-4); and has held that it is improper to value restricted stock at the market price

for unrestricted stock. Accounting Series Release No. 113, Investment Company Act Release No. 5847 (October 21, 1969). See Accounting Series Release No. 116, Investment Company Act Release No. 6026 (April 13, 1970). The SEC has plainly determined that these factors would be considered by willing buyers and sellers of stock in arriving at the market value of the holding corporation's stock. Yet the Tax Court and the Court of Appeals held as a matter of law, in direct conflict with the Third Circuit Court, that these factors cannot be considered in determining the price that Atapeco stock would bring in a sale between a willing and informed buyer and seller. It is the Third Circuit's view, however, which is correct as a matter of law.

The Court of Appeals in the instant case offered no reason for its departure from the rule of the Third Circuit Court. The only reason offered by the Tax Court was that Atapeco "is a diverse, viable going concern and there is no evidence of a plan for its liquidation, voluntary or otherwise." 33 T.C.M. at 911, App. A p. 67a. There is neither authority nor reason for valuing a particular asset at varying amounts depending on whether or not an imminent sale is contemplated. Both Courts simply disregarded the *Laird* case, cases following *Laird*, the Regulations, and applicable SEC criteria in refusing to consider factors which have long been recognized as relevant to determinations of market value, i.e., what a willing buyer would pay.

B. Failure To Utilize Market Quotations in Valuing Crown Stock

The Court below affirmed the Tax Court's valuation of Atapeco's Crown stock at book value without regard to the market prices at which Crown stock was actually

traded on the American Stock Exchange. This affirmation violated the clear mandate of the Regulations that—

“[I]f there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond.” Treas. Regs. Sec. 20.2031-2(b)(1).

The decision of the Court below is in direct conflict with decisions of the Third Circuit Court. *Amerada Hess Corporation v. Commissioner*, 517 F.2d 75 (3d Cir. 1975), cert. denied, 423 U.S. 869, 96 S. Ct. 574 (1975); *Hazeltine Corporation v. Commissioner*, 89 F.2d 513 (3d Cir. 1937). In *Hazeltine*, supra, the Third Circuit Court reversed a “fair market value” determination by the Board of Tax Appeals which ignored the prices at which stock was actually sold on the New York Curb Exchange. The Court stated:

“The Board seems to have ignored the evidence of fair market value furnished by the sales upon the Curb exchange and in this we think it fell into error. The primary evidence of the fair market value of corporate stock is what willing purchasers pay to willing sellers on the open market, even though the assets of the corporation do not reflect such values.” 89 F.2d at 519 (3d Cir. 1937).

More recently, in *Amerada Hess Corporation*, supra, the Third Circuit Court reversed the Tax Court's determination that the value of a large block of stock was the amount set by the parties to a corporate exchange of the stock for assets for the purpose of determining the number of shares to be issued, rather than the actual market value at the time the exchange was made, less a discount for blockage. The Tax Court

had concluded that the large block involved made market prices unreliable. Nevertheless, the Third Circuit Court held:

"Where . . . the property to be valued consists of securities traded on a stock exchange, the general rule is that the average exchange price quoted on the valuation date furnishes the most accurate, as well as the most readily ascertainable, measure of fair market value . . . Market analysts have developed reliable techniques for determining the amount by which the market price should be adjusted to correct for various abnormalities. . . . The Tax Court, however, neither adopted nor adapted the market price as the proper index of valuation in this case." 517 F.2d at 84.

The Court below, in affirming the Tax Court, placed itself squarely in opposition to the Third Circuit. Instead of directing the Tax Court to "adopt or adapt" market prices, as the *Amerada Hess* case requires, the Court below sanctioned the Tax Court's complete abandonment of market prices in favor of book value. Book value was more than twice the market price for the Crown stock. The only reason given by the Government's witness for using book value rather than market price was that the market for the Crown stock was "thin."¹⁰ Even if the Crown market were determined to be "thin," and therefore market values should not be a wholly determinative starting point for valuation, the asserted "thinness" would not warrant the arbitrary use of book value instead of applying the valuation standards developed in the regulations ap-

¹⁰ Government counsel, with commendable frankness, made on oral argument in the Court below the more persuasive statement that book value was employed in the Crown situation since it produced a higher valuation than did market value.

plicable to the case of stock for which the market does not accurately reflect the fair market value. Treas. Regs. Sec. 20.2031-2(e). See Treas. Regs. Sec. 20.2031-2(f)(2).

II.

THE PROPER DISPOSITION OF THIS CASE INVOLVES AN IMPORTANT QUESTION OF LAW WHICH SHOULD BE SETTLED BY THIS COURT.

It is commonly said that valuation is not an exact science. Precisely because of the broad possibilities for inconsistency which exist in this area, it is imperative that the basic criteria, which form the only bounds on the Tax Court's otherwise complete discretion, be clearly identified, authoritatively established, and applied consistently. This Court has recognized that the criteria to be applied in valuation cases are a matter of law and has heretofore reversed decisions applying improper standards. See *Powers v. Commissioner*, 312 U.S. 259 (1941).

It is a matter of common knowledge that many closely-held corporations themselves hold stock in other corporations and that it is frequently necessary to value these holdings in other corporations in connection with arriving at the value of the closely-held stock. Within six months after the Tax Court rendered its decision in the present case, it rendered decisions in two other cases—*Estate of Maurice Gustave Hecksher, supra*, and *Edwin A. Gallun*, 33 T.C.M. 1316 (1974)—which involved such a valuation question. In *Hecksher*, the Tax Court took into account the effect of the capital gains tax which would have been incurred on a sale of the securities. In *Gallun*, it took into account the effect of blockage which would have reduced the price obtainable on a sale, but refused to

give any effect to the capital gains tax which would have been incurred.

The erratic application of valuation standards exemplified by these two cases, and by the conflict between the Third and Fourth Circuits, demonstrates the need for this Court to settle authoritatively the principle to be followed so that there can be a modicum of uniformity and certainty in this area. If these two decedents had lived in Philadelphia instead of Baltimore, the estate tax liability would have been determined under the principles enunciated by the Third Circuit in *Laird* and would have been very much less than the tax determined by the Tax Court and affirmed by the Fourth Circuit. This would have also been true if they lived in Honolulu, where the courts have followed *Laird*. See *Obermer v. United States, supra*, and *Bishop Trust Company v. United States, supra*.

III.

THE COURT BELOW DECIDED THE BASIC ISSUE PRESENTED IN A WAY WHICH IS CONTRARY TO THE PRINCIPLES ESTABLISHED BY THIS COURT IN ANOTHER CONTEXT.

It is necessary to determine values of stocks of other corporations held by a particular corporation not only for the purposes of determining estate and gift taxes, but also for other purposes, such as determining the amounts which are available to meet business needs of the owning corporation for accumulated earnings tax purposes.¹¹ In *Ivan Allen Company v. United States*, 422 U.S. 617 (1975), this Court determined that appreciated stocks owned by the taxpayer should be valued at their fair market value less the costs of converting

¹¹ The accumulated earnings tax is imposed under Sections 531-37 of the Internal Revenue Code of 1954 (26 U.S.C. Secs. 531-37).

them into cash and the capital gains taxes which would be payable, rather than at book value. This Court stated that "the proper measure of those securities, for the purposes of the [Sec. 531] tax, is their *net realizable value*." 422 U.S. at 629 (emphasis supplied).

It is submitted that the decisions by the Court of Appeals for the Third Circuit in *Laird*, *Amerada Hess* and *Hazeltine, supra*, are consistent with the holding of this Court in *Ivan Allen, supra*, and that when the Tax Court ignored these cases and the Court of Appeals for the Fourth Circuit affirmed the Tax Court, the present cases were decided in a manner contrary to the valuation standards enunciated by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

CAROLYN E. AGGER
WALTER J. ROCKLER
LAURALEE A. MATTHEWS
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

JOHN S. McDANIEL, JR.
LAWRENCE A. KAUFMAN
915 The Blaustein Building
Baltimore, Maryland 21201

Of Counsel:
ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Attorneys for Petitioners

CABLE, McDANIEL, BOWIE AND BOND
915 The Blaustein Building
Baltimore, Maryland 21201

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

Supreme Court, U. S.
FILED

AUG 14 1976

MICHAEL ROZAK, JR., CLERK

No. **76-222**

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*,

No.

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K.
BLAUSTEIN and RUTH B. ROSENBERG,
SURVIVING EXECUTRICES, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Of Counsel:

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

CABLE, McDANIEL, BOWIE
and BOND
915 The Blaustein Building
Baltimore, Maryland 21201

CAROLYN E. AGGER
WALTER J. ROCKLER
LAURALEE A. MATTHEWS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

JOHN S. McDANIEL, JR.
LAWRENCE A. KAUFMAN
915 The Blaustein Building
Baltimore, Maryland 21201

Attorneys for Petitioners

INDEX

Page

APPENDIX A

Memorandum Findings of Fact and Opinion of the
United States Tax Court filed August 5, 1974 1a

APPENDIX B

Decisions of the United States Tax Court stating its
deficiency determinations, entered December 18,
1974 71a

APPENDIX C

Opinion of the United States Court of Appeals for the
Fourth Circuit filed August 13, 1975 74a

APPENDIX D

Order of the United States Court of Appeals for the
Fourth Circuit denying Petition for Rehearing,
dated May 24, 1976 76a

APPENDIX E

Statute and Regulations Involved 77a

APPENDIX A

MEMORANDUM FINDINGS OF FACT AND OPINION
OF THE UNITED STATES TAX COURT

T. C. Memo. 1974-203

UNITED STATES TAX COURT

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, *Petitioner* v. COMMISSIONER OF
INTERNAL REVENUE, *Respondent*ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K. BLAUSTEIN
AND RUTH B. ROSENBERG, SURVIVING EXECUTRICES, *Petitioner*
v. COMMISSIONER OF INTERNAL REVENUE, *Respondent*

Docket Nos. 5684-69, 1661-70.

Filed August 5, 1974.

John S. McDaniel, Jr. and *Lawrence A. Kaufman*, for the
petitioners.*Arnold E. Kaufman*, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

GOFFE, *Judge*: The Commissioner determined deficiencies
in petitioners' Federal estate taxes as follows:

<u>Petitioner</u>	<u>Docket No.</u>	<u>Date of Death</u>	<u>Estate Tax Deficiency</u>
Estate of Alvin Thalheimer, Ruth R. Rosenberg, Surviving Executrix	5684-69	7/8/65	\$1,967,884.83
Estate of Henrietta G. Blaustein, Hilda K. Blaustein and Ruth B. Rosenberg, Surviving Executrices	1661-70	12/8/65	1,302,201.32

The cases were consolidated for trial, briefs and opinion. Certain adjustments made by the Commissioner have either been conceded or were not raised by the petitioners. The only issue for decision is the valuation of certain classes of stock of a closely held family corporation which each decedent owned at death.

FINDINGS OF FACT

Jacob Blaustein, a legal resident of Baltimore County, Maryland, and Ruth B. Rosenberg, a legal resident of Baltimore City, Maryland, were the duly appointed executors of the estate of Alvin Thalheimer, deceased, (hereinafter referred to as Dr. Thalheimer), the petitioner in docket No. 5684-69, on the date they filed the petition in such case. Doctor Thalheimer died on July 8, 1965, a resident of Baltimore City, Maryland, and the Federal estate tax return for his estate was filed with the district director of internal revenue at Baltimore, Maryland.

Jacob Blaustein and Ruth B. Rosenberg were the duly appointed executors of the estate of Henrietta G. Blaustein, deceased (hereinafter referred to as Mrs. Blaustein), the petitioner in docket No. 1661-70, on the date they filed the petition in such case. Mrs. Blaustein died on December 8, 1965, a resident of Baltimore City, Maryland, and the Federal estate tax return for her estate was filed with the district director of internal revenue, Baltimore, Maryland.

Jacob Blaustein died on November 15, 1970. In accordance with the provisions of Dr. Thalheimer's last will and testament, no successor was appointed to Mr. Blaustein as an executor of Dr. Thalheimer's estate, and Mrs. Rosenberg is the surviving executrix of such estate. In accordance with the provisions of Mrs. Blaustein's last will and testament, Hilda K. Blaustein, a legal resident of Baltimore County, Maryland, was appointed as the successor to Mr. Blaustein as an executrix of Mrs. Blaustein's es-

tate, and Mrs. Hilda Blaustein and Mrs. Rosenberg are the executrices of such estate.

At the time of his death, Dr. Thalheimer was a widower and was survived by a son and three grandchildren. His wife, Fanny Blaustein Thalheimer, died in 1957. She was a daughter of the late Louis Blaustein. At the time of his death, Dr. Thalheimer was the first vice president and a director of American Trading and Production Corp., a Maryland corporation, hereinafter referred to as "ATAPCO," and owned the following shares of capital stock of ATAPCO, all of which he had inherited from his wife:

<u>Class of Stock</u>	<u>Number of Shares</u>	<u>Percent of Total Shares Outstanding</u>
5% Cumulative Class B First Preferred	666	.57%
6% Cumulative Second Preferred	3,779	.96%
Class A Common	15,367	8.29%
Class B Common	28,745	5.31%

The Federal estate tax liability of the estate of Fanny B. Thalheimer was settled on fair market values of preferred and common stocks of ATAPCO at \$10 per share and \$60 per share, respectively.

Mrs. Blaustein was the widow of the late Louis Blaustein, who died in 1937, and she was survived by two children, seven grandchildren and nineteen great-grandchildren (hereinafter collectively called the "Louis Blaustein descendants"). At the time of her death, Mrs. Blaustein owned the following shares of capital stock of ATAPCO:

<u>Class of Stock</u>	<u>Number of Shares</u>	<u>Percent of Total Shares Outstanding</u>
5% Cumulative Class B First Preferred	3,071	2.64%
6% Cumulative Second Preferred	1,866	.48%
Class A Common	9,700	5.23%
Class B Common	29,100	5.37%

Louis Blaustein and his son, Jacob Blaustein, were the founders of the business known as the American Oil Co., which was engaged in selling gasoline, kerosene and other petroleum products. The American Oil Co. originated in Baltimore, Maryland, and gradually expanded throughout the entire eastern part of the United States. Under the Blausteins' direction, it was the originator of many new ideas in the marketing of gasoline, such as the drive-in gasoline service station and premium motor fuel.

Prior to 1921, the Blausteins conducted their business as a partnership. In 1921, they transferred some of the assets (primarily gasoline service stations) to Lord Baltimore Filling Stations, Inc. (hereinafter called Lord Baltimore) in exchange for all of its capital stock, and, in 1922, they transferred all of the other assets to the American Oil Co. in exchange for all of its capital stock. These corporations did not have refineries, crude production or bulk transportation facilities, and the entire supply of gasoline was purchased from Standard Oil Co. of New Jersey (hereinafter called Jersey) which was American's largest competitor, under a contract with an expiration date of December 31, 1923.

In 1923, Louis and Jacob Blaustein sold 50 percent of the stock of American Oil and Lord Baltimore to Pan Ameri-

can Petroleum and Transport Co. (hereinafter referred to as Pan Am), which was independent of the Standard Oil companies and which, directly and through subsidiaries, had large crude oil reserves, three large refineries and extensive transportation facilities, but lacked sales outlets and marketing facilities. In connection with this stock sale, a broad spectrum of agreements were entered into, providing for the management and operation of American Oil and Lord Baltimore including an agreement that a Pan Am subsidiary would supply all of American Oil's gasoline requirements for a period of ten years expiring on December 31, 1933, an agreement that the Blausteins would elect one-half of the directors of American Oil and Lord Baltimore, who, in turn, would elect two members of the executive committee and the president, the first vice president and general manager and the second vice president of each corporation, with the other directors and officers being elected by Pan Am, and an agreement on further sales of the stock. In accordance with these agreements, Louis Blaustein served as president and Jacob Blaustein served as first vice president and general manager of American Oil and Lord Baltimore.

During the period 1923 to 1930, Standard Oil Co. of Indiana (hereinafter called Indiana), which had certain common stockholders with Jersey, acquired more than 95 percent of the stock of Pan Am and thereby indirectly became empowered to control the exercise of Pan Am's rights with respect to American Oil and Lord Baltimore.

In 1930, disputes arose between the Blausteins and Pan Am regarding the contract under which American Oil was buying its requirements of gasoline, and Pan Am threatened to stop supplying American Oil. These disputes intensified during 1931 and 1932. Additionally, the Blausteins learned in 1931 that Indiana proposed to transfer all of Pan Am's crude oil and refining properties to Jersey in exchange for Jersey stock, which would have ended Pan

Am's availability as a source of supply of gasoline for American Oil.

In early 1930, the Blausteins made efforts to have American Oil acquire Crown Central Petroleum Corp. (hereinafter called Crown) from which American Oil had been buying a special gasoline concentrate for blending purposes and which owned refining facilities which, with a substantial expenditure of money, could have been expanded and improved to meet American Oil's requirements. In April 1930, the Blausteins obtained, on behalf of American Oil, an option to acquire a controlling interest in Crown. Pan Am refused to permit American Oil to exercise this option, and in November 1930, the Blausteins acquired an interest in Crown for their own account.

After acquiring the interest in Crown, the Blausteins considered what means were available to raise the necessary funds to equip Crown to supply American Oil's requirements, and determined that the most feasible plan was to form a new corporation which would hold the interest in Crown plus sufficient stock of American Oil and Lord Baltimore to enable it to sell debentures or preferred stock in the territory in which American Oil and Lord Baltimore were favorably known. ATAPCO was organized for this purpose, and, in June 1931, the Blausteins transferred approximately one-half of their American Oil and Lord Baltimore stock and all of their Crown securities to ATAPCO in exchange for all of its stock.

Following the incorporation of ATAPCO, there were, concurrently, continuing studies with respect to the financing and planning of the improvement of the Crown refinery and negotiations with Indiana as to the establishment of a new corporation which would have not only the marketing business of American Oil and Lord Baltimore, but also would have refining capacity and a supply of crude oil. These negotiations with Indiana ultimately resulted in an agreement between the Blausteins and ATAPCO, on the

one hand, and Indiana on the other hand, that Pan Am, American Oil and Lord Baltimore would be reorganized to form a complete unit in the oil business, with a refinery, crude supplies and marketing facilities. The agreement provided, among other things, that ATAPCO and the Blausteins would exchange their American Oil and Lord Baltimore stock for Pan Am stock, that for a minimum of four years Louis Blaustein would be president of Pan Am and chairman of the board of American Oil and Jacob Blaustein would be first vice president of Pan Am and president of American Oil, during which period the Blausteins would manage and direct all marketing operations, and that so long as the Blausteins and ATAPCO continued to hold certain specified quantities of Pan Am stock, they would be entitled to specified representations on the boards of directors and executive committees of Pan Am and its subsidiaries, including American Oil and Lord Baltimore.

While the consummation of this agreement with Indiana made it unnecessary to develop Crown as a supply source for American Oil, the projected program for reconstructing and expanding Crown's refining facilities had proceeded to the point where a loss would be incurred if the program were completely terminated, and Crown proceeded with a more limited expansion and improvement of its refining facilities. Thereafter, Crown proceeded to develop and expand its business as an independent refiner and marketer of petroleum products. In 1965, Crown had refining and petrochemical facilities located on the Houston Ship Channel, interests in various pipelines, proven oil and gas leases in Texas, Louisiana, Mississippi and Pennsylvania, and it marketed petroleum products at wholesale and retail in the States of Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, West Virginia, North and South Carolina, Georgia, Alabama, Florida and Texas.

8a

Crown's refinery in 1965 was comprised primarily of a 33,000 B/D crude unit (installed in 1936 and subsequently modified) and downstream processing equipment consisting of two TCC units with an aggregate capacity of 24,000 B/D (built during World War II), an 8,500 B/D reformer (built in 1954), a 5,400 B/D Udex unit (built in 1961) and a 3,800 B/D alkylation unit (built in 1965). Crown's refinery had insufficient capacity to meet its marketing requirements. The crude unit was incapable of further expansion and the TCC units were obsolete and incapable of modification to take advantage of new techniques. Crown had high labor costs and difficulty with maintenance, and the total yield of its refinery was below industry averages. Because of these inadequacies, Crown planned either to replace the crude unit or build a companion unit, to replace the TCC units and to build other downstream units. The original estimated cost was \$36,000,000. This work was started in 1968 and completed in 1969 to 1970 at a total cost of \$46,000,000 which was financed by the issuance of convertible debentures, a mortgage loan and bank borrowings.

The following table shows Crown's gross operating income, net income and book equity at the end of the year, for each of the years 1961 to 1965:

	1961	1962	1963	1964	1965
Gross Operating Income	\$66,410,463	\$72,067,039	\$77,650,051	\$70,298,943	\$70,694,840
Net Income	635,988	827,663	793,471	465,784	1,509,662
Book Equity (End of Year)	20,954,815	21,574,624	22,094,736	22,354,384	23,575,226

9a

In 1965, Crown had 824,978 shares of common stock outstanding, of which 402,851 shares (approximately 48.8 percent of the total) were held by ATAPCO. Two officer-directors of Crown (Henry A. Rosenberg, Jr., administrative vice president and acting president, and John W. Cable, III, general counsel) were directors of ATAPCO. John W. Cable, III, was also a partner in the law firm of Cable & McDaniel, which was general counsel for ATAPCO. L. C. Dunbar, a vice president and director of ATAPCO, and John S. McDaniel, Jr., a partner in the law firm of Cable & McDaniel, were also directors of Crown. The Crown common stock is listed on the American Stock Exchange which is a national securities exchange as defined in the Securities Exchange Act of 1934. On July 8, 1965, the high and low prices of the Crown stock on such exchange were 12 $\frac{5}{8}$. On December 8, 1965, the high and low prices and the mean of such high and low were 14, 13 $\frac{3}{4}$ and 13 $\frac{7}{8}$, respectively. During the year 1965, the price of Crown common stock varied between a low of 12 and a high of 15 $\frac{1}{4}$, the number of shares traded in each month varied from a low of 2,100 shares to a high of 12,300 and a total of 59,900 shares were traded.

ATAPCO's basis for determining gain or loss on a sale of the Crown common stock it owned was \$624,579 and throughout 1965 such stock was carried as an asset on its balance sheet in the amount of \$624,579.

Almost immediately following the execution of the 1933 Agreement with Indiana, further disputes arose between the Blausteins and Indiana because of the failure by Indiana fully to carry out the terms of the agreement. In particular, the refinery which was built was only one-half the size stated in the Agreement and the construction of additional refining equipment was not started for almost two years; the commencement of the program for the acquisition of the crude properties was delayed until 1935; and Indiana refused to permit Pan Am to construct its own

pipeline system and required it to use pipelines of Indiana and Jersey and their subsidiaries. In January 1937, the Blausteins and ATAPCO instituted a derivative suit in the Supreme Court of the State of New York on behalf of Pan Am and all of its stockholders against Indiana, Jersey and various of their officers and directors, alleging that the defendants had conducted Pan Am's business for the benefit of Indiana and Jersey to the detriment of Pan Am and its other stockholders. This suit was decided in favor of the Blausteins and ATAPCO against Indiana by the Supreme Court of New York in June 1940. This decision was reversed by the Appellate Division in February 1942, and the reversal was upheld by the Court of Appeals of New York in July 1944. Thereafter, in April 1945, the Blausteins and ATAPCO instituted a suit in the Superior Court of the State of Delaware against Indiana for breach of the 1933 Agreement.

The litigation with Indiana was finally terminated in 1954 by an agreement that Pan Am would be merged into Indiana. The merger was consummated on August 17, 1954, at which time ATAPCO received 520,843 shares of capital stock of Indiana in exchange for the 670,325 shares of common stock of Pan Am then owned by it. The number of shares of Indiana stock held by ATAPCO was subsequently increased by a 100 percent stock dividend in 1954 and a two-for-one split in 1964 to 2,083,372 shares, which was the number of shares held by ATAPCO throughout 1965.

Although the Blausteins had, in 1937, ceased to be officers of Pan Am and American Oil and the related companies because of the litigation which was initiated in that year, they (and particularly Jacob Blaustein, following the death of his father) continued as directors and in other capacities and continuously participated in decisions in those areas where it was possible to reach decisions which would mutually benefit Indiana and the other stockholders of Pan Am, including the Blausteins. Following the merger of

Pan Am into Indiana in 1954, Jacob Blaustein became a director of Indiana, and he continuously participated in its management decisions, including, especially, those in respect of which his status as the president of ATAPCO (the largest single stockholder of Indiana), and as a very substantial stockholder of Indiana individually and as a trustee of several trusts holding stock in Indiana, might result in other stockholders of Indiana adhering to his conclusions that such decisions were in the best interests of the stockholders of Indiana. In this connection, Mr. Blaustein became a member of various committees of the board of directors of Indiana. The involvement of Jacob Blaustein in the management of Indiana resulted in his having knowledge of actual and proposed decisions by the management of Indiana prior to the time information was furnished to the investing public. While ATAPCO was free to dispose of the Indiana stock, because of Mr. Blaustein's relationship it would have had to make a full disclosure of any "insider's information" to a purchaser.

In 1965, Indiana had outstanding 70,794,742 shares of capital stock, of which 2,083,372 shares (approximately 2.94 percent of the total) was owned by ATAPCO. An additional 732,256 shares (approximately 1.03 percent) of Indiana capital stock was held by the Blaustein family. The Indiana capital stock is listed on the New York Stock Exchange, the Midwest Stock Exchange, and the Pacific Coast Stock Exchange, each of which is a national securities exchange as defined in the Securities Exchange Act of 1934. A total of 3,608,888 shares were traded on these exchanges in 1965. The shares owned by ATAPCO were equal to approximately 67 percent of the 1965 trading volume on the New York Stock Exchange and approximately 57 percent of the 1965 trading volume on all such exchanges and exceeded the total volume on all such exchanges in the last half of 1965. Distribution of the shares of Indiana stock held by ATAPCO would have required registration under

the Securities Act of 1933 or, in the absence of registration, would have required an investment representation by the purchasers.

On July 8, 1965, the high and low prices and the mean of such high and low prices for the Indiana stock on the New York Stock Exchange were $47\frac{3}{4}$, $46\frac{3}{8}$ and $47\frac{1}{16}$, respectively. On December 8, 1965, the high and low prices and the mean of such high and low prices for the Indiana stock on the New York Stock Exchange were 47, $46\frac{1}{2}$ and $46\frac{3}{4}$, respectively.

ATAPCO's basis for determining gain or loss on a sale of the Indiana capital stock was \$939,823 and throughout 1965 such stock was carried as an asset on the balance sheet of ATAPCO in the amount of \$5,834,530.

From time to time, Indiana, which had acquired a large quantity of Jersey capital stock in 1932 in connection with a sale of certain assets, distributed shares of capital stock of Jersey as a dividend. In 1965, ATAPCO held 148,159 shares of capital stock of Jersey out of a total of 215,426, 435. The Jersey capital stock is listed on the New York Stock Exchange. On July 8, 1965, the high and low prices and the mean of such high and low prices for the Jersey stock on such exchange were 77, $76\frac{1}{8}$ and $76\frac{9}{16}$, respectively. On December 8, 1965, the high and low prices and the mean of such high and low prices for the Jersey stock on such exchange were $79\frac{1}{8}$, $78\frac{3}{8}$ and $78\frac{3}{4}$, respectively. During the year 1965, the trading volume was 6,983,300 shares and the prices for Jersey stock varied between a low of $73\frac{5}{8}$ and a high of $90\frac{3}{4}$. There were no relationships between ATAPCO, Jacob Blaustein or any of ATAPCO's associates which would have restricted a sale by ATAPCO of the Jersey capital stock. The size of ATAPCO's holding of Jersey stock relative to total shares could have been absorbed in the market within a reasonable time without a significant effect on the market price.

ATAPCO's basis for determining gain or loss on a sale of the Jersey capital stock owned by it in 1965 was \$3,272,343 and such stock was carried as an asset on the balance sheet of ATAPCO in the amount of \$7,304,632 as of December 31, 1964, and of \$7,347,147 as of December 31, 1965.

In 1965, ATAPCO owned 28,710 shares of capital stock of Union Trust Company of Maryland (hereinafter called Union Trust), which was approximately 4.97 percent of the total of 578,000 shares of capital stock of Union Trust outstanding in 1965. Union Trust conducted a general banking and trust business in Baltimore and other parts of Maryland in 1965.

The stock of Union Trust was registered under the Securities Exchange Act of 1934. Jacob Blaustein, the president and a director of ATAPCO, and Morton K. Blaustein, a vice president, the treasurer and a director of ATAPCO, were each directors of Union Trust throughout 1965, and were members of various committees of the board of directors of Union Trust, and had knowledge of actual and proposed decisions by the management of Union Trust prior to the time information was furnished to the investing public. ATAPCO, Jacob Blaustein, Morton K. Blaustein, Hilda K. Blaustein (the wife of Jacob Blaustein and mother of Morton K. Blaustein), Barbara B. Hirschhorn and Elizabeth B. Roswell (daughters of Jacob Blaustein and sisters of Morton K. Blaustein), other relatives of Jacob and Morton K. Blaustein and trusts and estates of which Jacob Blaustein was a fiduciary owned in the aggregate in excess of 10 percent of the issued and outstanding capital stock of Union Trust.

The capital stock of Union Trust is not listed on any stock exchange, but instead is bought and sold on the "over-the-counter" market, and there is no published record of sales and purchases. Records are maintained by Union Trust showing the number of shares transferred from time to time from the name of one record holder to the name of

another record holder. Approximately one-half of the transfers involved sales and purchases and the other one-half involved other types of transactions, such as transfers from decedents to legatees. In some instances, a sale and a purchase will involve two transfers; i.e., an investment firm will acquire stock from a seller, have such stock transferred to its name and then resell such stock to a purchaser.

ATAPCO's basis for determining gain or loss on a sale of the Union Trust capital stock owned by it in 1965 was \$673,405 and such stock was carried as an asset on the balance sheet of ATAPCO in the amount of \$673,405.

On July 8, 1965, the bid and asked prices and the mean of such prices for Union Trust capital stock were 62½, 64 and 63¼, respectively. On December 8, 1965, the bid and asked prices and the mean of such prices were 66½, 67½ and 67, respectively.

In 1965, ATAPCO owned 4,641 shares of United States Fidelity & Guaranty Co., (hereinafter called U.S.F. & G.), including shares received as a stock dividend in 1965, or approximately .06 percent of the total 7,649,584 average shares outstanding during that year. U.S.F. & G. is engaged in writing substantially all kinds of insurance. The capital stock of U.S.F.&G. was traded over the counter in 1965 and was not listed on any stock exchange. On July 8, 1965 the bid and asked prices and the mean of such bid and asked prices for the U.S.F.&G. stock were 56¼, 57 and 56⅝, respectively. On December 8, 1965, the bid and asked prices and the mean of such bid and asked prices for the U.S.F.&G. stock were 64⅛, 64¾ and 64-7/16, respectively. The shares owned by ATAPCO could have been sold without any material effect upon the market. ATAPCO's basis for determining gain or loss on a sale of the U.S.F.&G. capital stock owned by it in 1965 was \$53,331 and such stock was carried as an asset on the balance sheet of ATAPCO in the amount of \$53,331.

In 1965, in addition to its stock holdings in Crown, Indiana, Jersey, Union Trust and U.S.F.&G., ATAPCO had several operating divisions comprised of a Marine Division, an Oil and Gas Division, a Real Estate Division and a Manufacturing Division, which latter consisted of the Atlas Sound and the Kromex components.

The Marine Division began business in 1938 with the acquisition of a used oil tanker operated primarily in the transportation of petroleum products for Crown from its refinery near Houston, Texas, to its terminal at Elizabeth, New Jersey, but which was also operated for other purposes. After the end of World War II, ATAPCO expanded and diversified its marine transportation activities to include the transportation of crude oil, specialty chemical products, vegetable oils, molasses and grain. All of the vessels which ATAPCO acquired were used vessels when acquired, and it never built new vessels. However, in 1958, it did "jumboize" one vessel by having a larger midbody constructed and inserted in the middle of an existing vessel, and it, from time to time, made improvements to vessels which did not increase their size or carrying capacity.

At the beginning of 1965, ATAPCO's fleet consisted of five vessels, four of which had been built during World War II and one of which was the jumboized vessel which had been built during World War II and rebuilt in 1958. During 1965, one of these vessels was scrapped, another vessel (built during World War II) was acquired and at the end of 1965 one vessel was in the course of having its midbody removed and replaced with a midbody of the same size from another tanker which had been built during World War II. The jumboized vessel was subject to a Preferred Ship Mortgage, the unpaid principal balance of which was \$1,533,770.73 on January 1 and July 8, 1965, and \$1,359,619.73 on December 8 and 31, 1965. The vessels owned by ATAPCO in 1965 and their equipment were carried as assets on the balance sheet of ATAPCO at values equal to

their costs less depreciation. Such values were \$4,299,899.14 on June 30, 1965, and \$4,309,202 on November 30, 1965, which amounts were the fair market values of the vessels and their equipment on July 8, 1965 and December 8, 1965, respectively.

During all of the years from 1938 through 1965, Crown chartered a vessel from ATAPCO which was used as the principal means of transporting products from Crown's refinery to its terminals on the East Coast. In 1965, Crown made other arrangements for moving its products and supplying its terminals and after December 12, 1965, it ceased chartering vessels from ATAPCO. ATAPCO also chartered vessels (primarily through brokers) to subsidiaries of Indiana and Jersey from time to time. The revenue from these charters was only a small part of the revenues received by ATAPCO from the operation of its vessels and ATAPCO supplied only a minute part of the transportation requirements of Indiana, Jersey and their subsidiaries.

ATAPCO was engaged in the exploration for and production of oil and gas since 1944. In 1965, it owned interests in producing oil and gas properties in Texas, New Mexico and Louisiana. In July 1965, a total of 93 oil and gas wells were in operation. A full working interest (i.e., the right to receive the entire production less only the royalties) was held in 36 wells, fractional parts of the working interests were held in 25 wells in which unrelated parties owned the balances of the working interest, and overriding royalties were held in 32 wells. Interests in approximately the same number of wells were held by ATAPCO throughout 1965. ATAPCO also held interests in other oil and gas leases on which there were no producing wells.

ATAPCO's interests in producing oil and gas wells and the related leases and equipment were included as assets on its balance sheet at values equal to total cost (including both costs of acquiring the lease and of drilling and equip-

ping the well) less depreciation, depletion and amortization. ATAPCO's interests in oil and gas leases on which there were no producing wells were included as assets on its balance sheet at values equal to total costs, including any "bonuses" paid in connection with the acquisitions of the leases and other capital costs, such as costs for securing geological data for evaluation purposes. The amounts so included as assets in the balance sheet of ATAPCO were \$7,870,377 as of June 30, 1965, and \$7,762,205 as of December 31, 1965. At all times during 1965, the fair market values of the oil and gas properties owned by ATAPCO, including leases, wells and well and leasehold equipment, as an entirety was \$4,000,000.

At all relevant times, the oil produced by ATAPCO was sold in the field to petroleum refiners or their oil purchasing subsidiaries or to companies engaged in gathering oil and reselling the gathered oil to petroleum refiners or their oil purchasing subsidiaries. At all relevant times, the gas produced by ATAPCO was sold in the field to natural gas companies or operators of plants which extract liquid material from the natural gas. ATAPCO does not refine or otherwise process the oil and gas produced by it. None of the oil and gas produced by ATAPCO was sold to Crown, but small quantities were sold to subsidiaries of Jersey and Indiana. Customarily, only one company buys the oil produced in the field and that company is required to buy oil from all producers without discrimination.

In 1965, ATAPCO owned 450 shares of the class A capital stock of Charles Street Development Corp., a Maryland corporation (hereinafter called Charles Street). Charles Street had issued and outstanding 900 shares of class A capital stock and 900 shares of class B capital stock. The other 450 shares of the class A capital stock of Charles Street were owned by Blaustein Industries, Inc., a Maryland corporation, all of the capital stock of which was owned by Jacob Blaustein and his three children with the

exception of certain shares of non-voting first preferred stock which were owned by a charitable foundation and grandchildren of Jacob Blaustein. Six children of Matthew M. McCloskey held 855 shares of the class B capital stock of Charles Street and the remaining 45 shares were held by an associate of Mr. McCloskey. Such children and associate did not own any capital stock of ATAPCO and did not have any relationship to ATAPCO otherwise than in connection with Charles Street. The class A capital stock of Charles Street was held by ATAPCO subject to the provisions of Charles Street's charter and bylaws and various agreements, which provided, in substance, that each class of stock would elect one-half the directors, each group of directors would elect certain officers, concurrence by both groups would be required for various actions and for various restrictions on the sale of the stock and interests in the enterprise.

During the year 1965, Charles Street owned lands in Baltimore City, Maryland, fronting on Baltimore Street, Charles Street and Fayette Street. The frontage along Charles Street was interrupted by a street known as Wilkes Lane. The frontage along Baltimore Street was not continuous, being interrupted by parcels of land owned by others, some of which was leased by Charles Street. The intersection of Charles and Baltimore Streets is the technical center of Baltimore City, and the lands owned by Charles Street are immediately to the east of an Urban Renewal area known as Charles Center. With the exception of a small part of the lands fronting on Baltimore Street, all of the lands had been acquired by Charles Street in 1960 from The May Department Stores Co. for \$1,300,000 of which \$300,000 was paid in cash and the balance of which was evidenced by a purchase money mortgage in the original amount of \$1,000,000.

In 1961, Charles Street started the construction of a large office building (the Blaustein Building) on that part

of such lands (measuring approximately 112 feet along Charles Street and approximately 140 feet along Fayette Street and Wilkes Lane) which fronted on Charles Street between Wilkes Lane and Fayette Street. This building, which had 25 office floors, a lobby floor with commercial tenants, a mezzanine floor occupied by the trust department and a branch banking office of Union Trust and a small garage for tenant parking, was completed in 1963 (except for tenant improvements in unrented space) at a total cost, exclusive of land, of approximately \$8,746,000. The cost of constructing this office building was covered in part by \$8,100,000 borrowed from the Prudential Insurance Co. of America, which was secured by a first mortgage on the land and building. In connection with the construction of the Blaustein Building, the original purchase money mortgage was divided into two parts, with two-thirds being allocated to a mortgage on the land under the Blaustein Building.

In connection with the construction of the Blaustein Building, a part of the existing improvements fronting on Charles Street between Wilkes Lane and Baltimore Street were demolished and the land was paved and used as a parking lot. The balance of the lands between Wilkes Lane and Baltimore Street which were owned or leased by Charles Street were improved by old retail stores, some of which were vacant. These lands were subject to the unpaid balance of the remaining one-third of the purchase money mortgage and two purchase money mortgages which had been incurred in connection with the acquisition of properties fronting on Baltimore Street in addition to the properties acquired in 1960.

The fair market value of Charles Street's equity in the Blaustein Building and land in 1965 was \$1,700,000. The fair market value of Charles Street's equity in other lands and improvements owned by it in 1965 was \$100,000. In 1965, Charles Street's only other assets consisted of furniture and equipment, operating supplies, accounts receiv-

able, prepaid expenses and like assets which did not have a value in excess of its liabilities exclusive of unpaid principal owing on mortgage indebtedness and amounts owing to its stockholders.

ATAPCO's basis for determining gain or loss on a sale of the 450 shares of class A capital stock of Charles Street owned by it in 1965 was \$90,000 and such stock was carried as an asset on the balance sheet of ATAPCO in the amount of \$90,000. At the beginning of 1965, Charles Street owed its stockholders \$2,817,600 for advances received from time to time in connection with the construction of the Blaustein Building and for other purposes. Such funds had been advanced by the stockholders in proportion to their respective stock ownership and \$704,400 of such amount was owed to ATAPCO. On March 31, 1965, Charles Street repaid \$500,000 from the proceeds of the final advance against the mortgage on the Blaustein Building, of which \$125,000 was paid to ATAPCO, reducing the amount owed to it to \$579,400. Thereafter, on April 30, 1965, October 31, 1965, and December 31, 1965, further payments on this indebtedness were made by Charles Street to ATAPCO and the other stockholders in the respective amounts of \$80,000, \$20,000 and \$20,000, of which \$20,000, \$5,000 and \$5,000 were paid to ATAPCO. On December 31, 1965, Charles Street owed its stockholders \$2,197,600 of which \$549,400 was owed to ATAPCO. The amounts owed by Charles Street to ATAPCO during 1965 were carried as assets in such amounts on the balance sheet of ATAPCO.

In February 1965, ATAPCO purchased the Dinkler Motor Hotel in Atlanta, Georgia, for \$400,000 (plus adjustments at closing) subject to mortgages aggregating \$1,200,000. In April 1965, ATAPCO purchased the Americana Apartments in Dallas, Texas, for \$340,000 (minus closing adjustments) subject to mortgages aggregating \$2,220,000. Each such purchase included land, improvements, furniture and equipment. At all times during 1965, the fair mar-

ket values of these properties were their costs less depreciation and the fair market values of ATAPCO's equity was such cost less depreciation and less the unpaid principal balance of the mortgage debts. On December 31, 1965, the depreciated cost of these properties was \$4,095,933.34 and the unpaid principal balances of the mortgage debts aggregated \$3,367,640.36.

In May 1964, ATAPCO acquired all of the capital stock of Wilshire Properties, Inc., a Maryland corporation, for \$225,000. The funds so received by Wilshire Properties, Inc., were used by the latter to acquire from Prudential Insurance Co. of America a lease on a tract of land on Wilshire Boulevard, Los Angeles, California. The tract of land was partially improved with old buildings and it was ATAPCO's intention to demolish such buildings and construct new buildings. During 1964 and 1965, ATAPCO advanced Wilshire Properties, Inc., such funds as were necessary to enable the latter to pay the rent, property taxes and other expenses incurred by it. The excess of such rent, property taxes and other expenses incurred by Wilshire Properties, Inc., over the revenues received by it were capitalized. All amounts so advanced by ATAPCO to Wilshire Properties, Inc., were carried as an asset on the balance sheet of ATAPCO at a value equal to the total thereof. In 1965, the fair market value of the capital stock of Wilshire Properties, Inc., was \$225,000 and the fair market value of the advances was equal to the advances.

On October 31, 1961, ATAPCO purchased all of the assets of Atlas Sound Corp. for \$959,481 payable in cash, \$600,000 payable in notes over 5 years from 1962 to 1966 and an assumption of all liabilities with the exception of certain income tax liabilities and liabilities related to the transaction. The excess of the purchase price so paid over the tangible assets acquired was \$688,259.09, and such amount was included as an asset on the balance sheet of ATAPCO under the caption "Purchase Price of Atlas Sound * * * Division(s) in excess of net tangible assets."

Atlas Sound Corp. was engaged in the business of manufacturing horn-type loudspeakers, microphone stands and accessories and related products. During 1965, and prior thereto, the business of Atlas Sound was conducted from a leased multistory loft building in Brooklyn, New York. In 1965, ATAPCO was planning to move these operations to a building to be built by it in Parsippany, New Jersey, and this move was accomplished in 1966.

After acquiring the business of Atlas Sound Corporation, ATAPCO conducted such business as a division and not as a separate entity. While the division operations were largely autonomous and records were maintained and statements prepared as to its operations and its assets and liabilities, such statements did not reflect the results of operations and its assets and liabilities in the same manner as if the Atlas Sound Division were a separate corporate entity. In particular, the statements as to results of operations did not reflect any allowance for income taxes since other deductions of ATAPCO offset the income of this division or any deduction for management, financial, legal and accounting services which were provided by the corporate headquarters of ATAPCO. Similarly, the statements as to assets and liabilities were limited to those assets and liabilities which were specifically allocated to Atlas Sound and did not include liabilities for borrowed funds or cash in ATAPCO's general accounts.

In 1965, the value of Atlas Sound was \$1,900,000 (inclusive of the \$688,259.09 previously recorded as an asset) in addition to the excess of its tangible assets over liabilities, other than the liability to pay the unpaid balance of \$120,000 owing on the deferred portion of the purchase price. The value of Atlas Sound on July 8, 1965, after giving effect to such increase in the value over tangible assets, but before reducing such value by the \$120,000 owing on the deferred portion of the purchase price, was \$2,660,000 and such value was \$3,100,000 on December 8, 1965.

On September 30, 1964, ATAPCO acquired all of the assets of Kromex Corp., other than cash equal to liabilities which were not assumed by ATAPCO, for \$4,150,000 and an assumption of liabilities other than liabilities for certain income tax obligations (including income tax obligations to be incurred in connection with the transaction) and certain liabilities for expenses in connection with the transaction. The excess of the amount so paid over the tangible assets acquired was \$897,994.34 and such amount was included as an asset on the balance sheet of ATAPCO under the caption "Purchase price of * * * Kromex Division (s) in excess of net tangible assets."

Kromex Corp. was engaged in the manufacture of aluminum and chrome-plated kitchenwares and aluminum, chrome-plated, wooden and other gift wares. Its factory and offices were located in Cleveland, Ohio. After its acquisition by ATAPCO, the business previously conducted by the Kromex Corp. was conducted as a division of ATAPCO and not as a separate entity. During 1965, the business of ATAPCO's Kromex Division continued to have a value of \$897,994.34 in excess of tangible assets and continued to have a value as an entirety of \$4,150,000 in excess of liabilities.

In December 1964, ATAPCO borrowed \$15,000,000 on long-term unsecured notes, repayable in annual installments of \$1,000,000 each commencing on December 1, 1970. Of the amount so borrowed, \$12,000,000 was applied in repayment of then outstanding unsecured indebtedness of ATAPCO and the balance of \$3,000,000 was added to ATAPCO's general funds and was available for future use. Such \$3,000,000 was not used in 1965 and continued to be available for future use.

During 1965, ATAPCO had a number of inactive subsidiaries. One such subsidiary (Belvedere Petroleum Corp.) had been organized to explore for oil and gas in Canada,

but did not start operations until 1966. The other such subsidiaries had been organized for nameholding purposes. None of such subsidiaries had any assets other than cash and capitalized organization expense. All amounts paid by ATAPCO for stock in subsidiaries or as advances to such subsidiaries were included as assets on the balance sheet of ATAPCO at values equal to the amounts so paid or advanced and had fair market values equal thereto.

From the time of its incorporation through 1965, shares of capital stock of ATAPCO were never owned by anyone other than Louis Blaustein, his wife, Henrietta G. Blaustein, descendants of Louis Blaustein, spouses of such descendants, the estates of Louis Blaustein, Fanny B. Thalheimer, Alvin Thalheimer and Henrietta G. Blaustein and inter vivos and testamentary trusts for the benefit of such descendants of Louis Blaustein and spouses with the following exceptions:

(a) On October 23, 1952, 180,000 shares of class B first preferred stock of ATAPCO were sold by the owners thereof to six institutional purchasers who converted such class B first preferred stock into shares of class A first preferred stock. Such shares of class A first preferred stock were subsequently redeemed with the final redemption occurring on December 30, 1958;

(b) From time to time, shares of 6 percent cumulative second preferred stock have been contributed to charitable foundations;

(c) Fanny B. Thalheimer, Alvin Thalheimer and Henrietta G. Blaustein each bequeathed shares of class B common stock to charitable foundations.

Throughout 1965, ATAPCO had issued and outstanding 4 classes of capital stock consisting of 116,496 shares of 5 percent cumulative class B first preferred stock; 391,092 shares of 6 percent cumulative second

preferred stock; 185,310 shares of no-par value class A common stock; and 541,630 shares of no-par value class B common stock. Only the class A common stock held the power to vote.

The following tables show the owners of the various classes of capital stock of ATAPCO on December 31, 1965, and the changes which occurred in such holdings during the year 1965:

5% CUMULATIVE CLASS B FIRST
PREFERRED STOCK
(\$10 Par Value)

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Jacob Blaustein, Trustee	88,000	75.54%
Jacob Blaustein	802	.69
Ruth B. Rosenberg	1,047	.90
Morton K. Blaustein	985	.84
Barbara B. Hirschhorn	1,000	.86
Elizabeth B. Roswell	985	.84
Susan Morton Blaustein	1,000	.86
Jeanne Patz Blaustein	700	.60
Daniel Blaustein Hirschhorn	1,000	.86
Michael Joseph Hirschhorn	1,000	.86
Deborah Sophie Hirschhorn	1,000	.86
Sarah Beth Hirschhorn	400	.34
Robert Alan Roswell	1,000	.86
Marjorie Blaustein Roswell	400	.34
Louis Blaustein Thalheimer	992	.85
Elizabeth Lyon Thalheimer	997	.86
Marjorie Ellen Thalheimer	997	.86
Henry A. Rosenberg, Jr.	997	.86
Ruth R. Davidson	981	.84
Judith R. Hoffberger	997	.86
Henry A. Rosenberg, III	1,000	.86
Edward Lee Rosenberg	1,000	.86

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Frank Blaustein Rosenberg	1,000	.86
Lisa Joy Davidson	1,000	.86
Julie Gail Davidson	1,000	.86
Jeffrey Alan Hoffberger	1,000	.86
Russell Jay Hoffberger	100	.08
Estate of Henrietta Blaustein ¹	3,071	2.63
Estate of Alvin Thalheimer ²	666	.57
Alvin Thalheimer, Herbert Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees U/W (Item IX) Fanny B. Thalheimer	381	.33
Alvin Thalheimer, Jacob Blaustein, Ruth B. Rosenberg, and Union Trust Co. of Maryland, Trustees, U/A with Herbert Thalheimer dated April 15, 1964	898	.77
Herbert Thalheimer	100	.08
TOTAL	116,496	100.00%

Changes since 12/31/64:

¹ Previously owned by Henrietta Blaustein but transferred to her estate by reason of death 12/8/65.

² Previously owned by Alvin Thalheimer but transferred to his estate by reason of death 7/8/65.

6% CUMULATIVE SECOND PREFERRED STOCK
(\$10 Par Value)

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Jacob Blaustein, Trustee	176,000	45.00%
Morton K. Blaustein	6,145	1.57
Susan Morton Blaustein	6,200	1.59
Jeanne Patz Blaustein	500	.13
Estate of Henrietta Blaustein ¹	1,866	.48
Jacob Blaustein	157	.04
Barbara B. Hirschhorn	6,447	1.65
Daniel Blaustein Hirschhorn	2,600	.66
Michael Joseph Hirschhorn	800	.20
Deborah Sophie Hirschhorn	500	.13
Sarah Beth Hirschhorn	500	.13
Elizabeth B. Roswell	6,310	1.61
Robert Alan Roswell	2,597	.66
Marjorie Blaustein Roswell	500	.13
Ruth R. Davidson ²	6,313	1.61
Lisa Joy Davidson ²	4,690	1.20
Julie Gail Davidson ²	2,300	.59
Henry A. Rosenberg, Jr. ²	7,457	1.91
Henry A. Rosenberg, III ²	7,100	1.82
Edward Lee Rosenberg ³	5,297	1.35
Frank Blaustein Rosenberg ²	3,500	.89
Ruth B. Rosenberg ⁴	46,306	11.84
Louis Blaustein Thalheimer	9,283	2.37
Elizabeth Lyon Thalheimer	9,494	2.43

¹ Previously owned by Henrietta Blaustein but transferred to her estate by reason of death 12/8/65.

² Received 300 shares each from Ruth B. Rosenberg as a gift on 12/22/65.

³ Received 297 shares from Ruth B. Rosenberg as a gift on 12/22/65.

⁴ Gave 6,997 shares as a gift on 12/22/65.

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Marjorie Ellen Thalheimer	9,496	2.43
Judith R. Hoffberger ²	7,355	1.88
Jeffrey Alan Horberger ²	3,500	.89
Russell Jay Hoffberger ²	1,400	.36
The Louis and Henrietta Blaustein Foundation, Inc. ⁵	2,600	.67
The Henry and Ruth B. Rosenberg Foundation, Inc. ⁶	14,500	3.71
Estate of Alvin Thalheimer ⁷	3,779	.97
Alvin Thalheimer, Herbert Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees U/W (Item IX) Fanny Thalheimer	2,165	.55
Alvin Thalheimer, Jacob Blaustein, Ruth B. Rosenberg and Union Trust Co. of Maryland, Trustees U/A with Herbert Thalheimer dated April 15, 1964	33,235	8.50
Herbert Thalheimer	200	.05
TOTAL	391,092	100.00%

⁵ Received 1,400 shares from Ruth B. Rosenberg as a gift on 12/22/65.

⁶ Received 2,600 shares from Ruth B. Rosenberg as a gift on 12/22/65.

⁷ Previously owned by Alvin Thalheimer but transferred to his estate by reason of death 7/8/65.

30a

NO-PAR VALUE CLASS A COMMON STOCK
(\$5 Stated Value)

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Jacob Blaustein, Trustee	55,000	29.68%
Jacob Blaustein, Alvin Thalheimer and Ruth B. Rosenberg, Trustees	23,100	12.47
Alvin Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees	17,100	9.23
Ruth B. Rosenberg, Alvin Thalheimer and Jacob Blaustein, Trustees	17,100	9.23
Estate of Henrietta Blaustein ¹	9,700	5.23
Jacob Blaustein	14,970	8.08
Ruth B. Rosenberg	24,170	13.04
Estate of Alvin Thalheimer ²	15,367	8.29
Alvin Thalheimer, Herbert Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees U/W (Item IX) Fanny B. Thalheimer	8,803	4.75
TOTAL	185,310	100.00%

Changes since 12/31/64:

¹ Previously owned by Henrietta Blaustein but transferred to her estate by reason of death 12/8/65.

² Previously owned by Alvin Thalheimer but transferred to his estate by reason of death 7/8/65.

31a

NO-PAR VALUE CLASS B COMMON STOCK
(\$5 Stated Value)

<u>Beneficial Owners</u>	<u>Shares</u>	<u>Percent of Total</u>
Jacob Blaustein, Trustee	165,000	30.46%
Jacob Blaustein	44,910	8.29
Ruth B. Rosenberg	72,510	13.39
Estate of Henrietta Blaustein ¹	29,100	5.37
Jacob Blaustein, Alvin Thalheimer and Ruth B. Rosenberg, Trustees	69,300	12.80
Alvin Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees	51,300	9.47
Ruth B. Rosenberg, Alvin Thalheimer and Jacob Blaustein, Trustees	51,300	9.47
The Alvin and Fanny Blaustein Thalheimer Foundation, Inc.	13,000	2.40
Estate of Alvin Thalheimer ²	28,745	5.31
Alvin Thalheimer, Herbert Thalheimer, Jacob Blaustein and Ruth B. Rosenberg, Trustees U/W (Item IX) Fanny B. Thalheimer	16,465	3.04
TOTAL	541,630	100.00%

Changes since 12/31/64:

¹ Previously owned by Henrietta Blaustein but transferred to her estate by reason of death 12/8/65.

² Previously owned by Alvin Thalheimer but transferred to his estate by reason of death 7/8/65.

During the years 1960 to 1965, ATAPCO paid the following dividends on its capital stock:

Year	Preferred	Dividend	Common
1960	\$292,903.20		\$ 74,124.00
1961	292,903.20		74,124.00
1962	292,903.20		74,124.00
1963	292,903.20		109,041.00
1964	292,903.20		181,735.00
1965	292,903.20		363,470.00

For the years 1961 through and including 1965, ATAPCO reported no taxable income on its corporate Federal income tax returns filed with the Internal Revenue Service and, therefore, paid no tax with the filing of its returns.

The comparative balance sheet of ATAPCO as of December 31, 1965, and December 31, 1964, is as follows:

AMERICAN TRADING AND PRODUCTION CORPORATION CORPORATION BALANCE SHEET

	ASSETS	
	December 31	
	1965	1964
CURRENT ASSETS		
Cash	\$ 6,687,090.82	\$ 6,318,133.08
Accounts receivable—trade	1,932,490.08	1,754,345.13
Inventory—at lower of cost or market:		
Merchandise, materials and supplies	1,514,858.60	1,294,338.20
Prepaid expenses	307,624.57	302,271.68
TOTAL CURRENT ASSETS	<u>10,442,064.07</u>	<u>9,669,088.09</u>
INVESTMENTS AND OTHER ASSETS		
Capital stock of other companies— at cost (except as stated in Note A) which is substantially less than quoted market	14,881,397.77	14,811,883.61
Purchase price of Atlas Sound and Kromex Divisions in excess of net tangible assets	1,586,253.43	1,591,945.25
Advances, insurance claims and sundry	1,168,609.35	882,967.64
TOTAL INVESTMENTS AND OTHER ASSETS	<u>17,636,260.55</u>	<u>17,286,796.50</u>
PROPERTY, PLANT AND EQUIPMENT— on the basis of cost		
Oil and gas properties, less allowance for depreciation, depletion and amortization 1965, \$4,646,987.23; 1964, \$5,253,744.55	7,762,205.11	7,809,515.87
Vessels, less allowance for depreciation 1965, \$7,950,271.52; 1964, \$7,685,915.68—Note B	4,217,132.77	3,701,653.53
Manufacturing Divisions:		
Land	107,072.36	90,272.36

34a

ASSETS (continued)

	December 31	
	1965	1964
Buildings, less allowance for depreciation 1965, \$35,105.90; 1964, \$7,021.20	517,290.24	554,672.94
Equipment, less allowance for depreciation 1965, \$299,459.76; 1964, \$86,066.04	1,238,954.26	1,405,068.97
	<u>1,863,316.86</u>	<u>2,050,014.27</u>
Real Estate Division—Note B:		
Land	821,001.07	—0—
Buildings, less allowances for depreciation of \$58,264.12	2,918,432.65	—0—
Equipment, less allowance for depreciation of \$28,614.16	356,499.62	—0—
	<u>4,095,933.34</u>	<u>—0—</u>
Other equipment and leasehold improvements, less allowance for depreciation and amortization 1965, \$287,548.37; 1964, \$255,723.80	275,334.13	277,804.58
TOTAL PROPERTY, PLANT AND EQUIPMENT	<u>18,213,922.21</u>	<u>13,838,988.25</u>
TOTAL ASSETS	<u>\$46,292,246.83</u>	<u>\$40,794,872.84</u>

35a

LIABILITIES AND STOCKHOLDERS' EQUITY

	December 31	
	1965	1964
CURRENT LIABILITIES		
Accounts payable and accrued expenses	\$ 1,905,861.26	\$ 1,652,935.41
Federal income taxes—Note C	650,000.00	—0—
Current maturities on long-term debt	387,457.57	294,151.00
TOTAL CURRENT LIABILITIES	<u>2,943,318.83</u>	<u>1,947,086.41</u>
LONG-TERM DEBT, less current maturities—Note B		
5¼% Notes—unsecured	15,000,000.00	15,000,000.00
Notes payable to stockholders, due 1967—unsecured	285,175.00	289,175.00
Preferred Purchase Money Mortgage—payable on a vessel	1,185,468.73	1,359,619.73
Purchase Money Mortgage Notes	3,274,033.79	—0—
5% Purchase Money Note	—0—	120,000.00
TOTAL LONG-TERM DEBT	<u>19,744,677.52</u>	<u>16,768,794.73</u>
DEFERRED INCOME		
Credits applicable to unterminated voyages—net	470,984.46	694,471.82
TOTAL LIABILITIES	<u>23,158,980.81</u>	<u>19,110,352.96</u>
STOCKHOLDERS' EQUITY:		
CAPITAL STOCK (as of December 31)		
Class A First Preferred Stock, 5% cumulative, par value \$10.00 per share:		
Authorized and unissued 120,000 shares	—0—	—0—

LIABILITIES AND STOCKHOLDERS' EQUITY (continued)

	December 31	
	1965	1964
Class B First Preferred Stock, 5% cumulative, par value \$10.00 per share: Authorized 120,000 shares; outstanding 116,496	1,164,960.00	1,164,960.00
Second Preferred Stock, 6% cumulative, par value \$10.00 per share: Authorized 1,000,000 shares; outstanding 391,092 shares	3,910,920.00	3,910,920.00
Class A Common Stock, no par value: Authorized 200,000 shares; 185,310 shares	926,550.00	926,550.00
Class B Common Stock, no par value: Authorized 2,000,000 shares; outstanding 541,630 shares	2,708,150.00	2,708,150.00
Capital stock at end of year	8,710,580.00	8,710,580.00
EARNED SURPLUS		
Balance at beginning of year	12,673,939.88	10,487,661.23
Additions:		
Net earnings for the year	3,353,365.12	2,660,916.85
	16,027,305.00	13,148,578.08
Deductions:		
Cash dividends declared and paid:		
On 5% Class B First Preferred Stock	58,248.00	58,248.00
On 6% Second Preferred Stock	234,655.20	234,655.20
On Common Stock	363,470.00	181,735.00
	656,373.20	474,638.20

LIABILITIES AND STOCKHOLDERS' EQUITY (continued)

	December 31	
	1965	1964
Adjustment resulting from settlement of prior years' federal income tax claims, including interest	948,245.78	—0—
	1,604,618.98	474,638.20
Earned surplus at end of year	14,422,686.02	12,673,939.88
TOTAL STOCKHOLDERS' EQUITY AT END OF YEAR	23,133,266.02	21,384,519.88
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$46,292,246.83	\$40,794,872.84

NOTES TO THE BALANCE SHEET

- A. Securities owned recorded at cost excepting Std. Oil Co. (N.J.) which was reed. as dividends and recorded at fair market values (sales and repurchases in 1964 and 1965 recorded at cost).
- B. 5¼% Notes to be repaid \$1,000,000 annually commencing December 1, 1970. One of co. tankers with \$2,726,828 depreciated cost covered by purchase money mortgage of \$1,359,620 payable \$174,151, balance September 10, 1973. Real Estate Div. assets subject to \$3,367,340 in purchase money mortgages.
- C. IRS tax deficiency yrs. 1955-1959 settled for \$650,000 plus interest.

The total book value of ATAPCO's assets rose from \$32,470,798.75 as of December 31, 1959, to \$50,810,313 as of December 31, 1966. The total stockholders' equity as reflected on ATAPCO's books rose from \$18,312,783.90 as of December 31, 1959, to \$27,658,130 as of December 31, 1966.

The fair market value of ATAPCO's 25 percent interest in Charles Street Development Corp. as of July 8, 1965, and December 8, 1965, was \$450,000.

The fair market value of ATAPCO's holdings in Union Trust Co. of Maryland as of July 8, 1965, and December 8, 1965, was \$1,815,907 and \$1,923,570, respectively.

The fair market value of ATAPCO's holdings in United States Fidelity and Guaranty Co. as of July 8, 1965, and December 8, 1965, was \$262,797 and \$299,054, respectively.

The balance sheets of Crown as of December 31, 1961, and December 31, 1965, were as follows:

**CROWN CENTRAL PETROLEUM COMPANY
AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
DECEMBER 31, 1961**

ASSETS

CURRENT ASSETS

Cash			\$ 2,678,885
Trade accounts receivable, net of allowance for doubtful accounts			8,064,615
Refundable Federal taxes on income—estimated			63,434
Inventories:			
Crude oil and refined products—at cost not in excess of market	\$ 9,237,311		
Material and supplies— at cost	512,765	9,750,076	
TOTAL CURRENT ASSETS			\$20,557,010

OTHER ASSETS

Investments, sundry accounts receivable, etc. (Note A)			116,978
---	--	--	---------

**PROPERTY, PLANT AND EQUIP-
MENT—substantially at cost**

Land		2,642,374	
Oil and gas properties	6,767,837		
Less allowance for depletion and depreciation	3,994,396	2,773,441	
Refinery, pipe lines and other equipment	26,684,673		
Less allowance for depreciation	15,312,877	11,371,796	16,787,611

DEFERRED CHARGES

Prepaid expenses, etc.			217,246
			<u>\$37,678,845</u>

40a

LIABILITIES

CURRENT LIABILITIES

Long-term debt—due within one year (Note B)	\$ 1,400,000	
Accounts payable and accruals	<u>8,224,030</u>	
TOTAL CURRENT LIABILITIES		\$ 9,624,030

LONG-TERM DEBT (Note B)		7,100,000
-------------------------	--	-----------

CAPITAL STOCK AND SURPLUS

Capital stock:

Preferred stock—5% non-
cumulative, voting, par
value \$100 per share:

Authorized 761 shares,
none outstanding

Common stock—par value
\$5 per share:

Authorized 2,500,000 shares
issued and issuable

825,720 shares \$ 4,128,600

Less in treasury

735-63/75 shares 3,679 4,124,921

Surplus:

Capital surplus 2,539,655

Earned surplus 14,290,239 20,954,815
\$37,678,845

41a

NOTES TO FINANCIAL STATEMENTS

NOTE A—The accounts of four wholly-owned subsidiaries, which have been excluded from consolidation, are not material. The accounts of all other wholly-owned subsidiaries have been consolidated.

NOTE B—Long-term debt at December 31, 1961, consists of the following:

	PAYABLE	
	Within One Year	After One Year
4.7% notes secured by deeds of trust dated November 30, 1954, as supplemented and amended by supplemental deeds of trust dated July 1, 1957, April 1, 1958, and January 1, 1961, due in quarter-annual installments of \$150,000	\$ 600,000	\$3,900,000
5¼% notes under credit agreement dated January 1, 1961, due in quarter-annual installments of \$200,000 beginning March 31, 1962	<u>800,000</u>	<u>3,200,000</u>
	<u>\$1,400,000</u>	<u>\$7,100,000</u>

The deeds of trust securing the 4.7% notes cover specific oil and gas properties in Louisiana and Texas and 3,000 shares of Crown-Rauncho Pipe Line Corporation capital stock (a wholly-owned subsidiary).

The deeds of trust and credit agreement contain certain restrictions and stipulations on the declaration of dividends, retirement of stock, capital expenditures and the consolidated net working capital of the Company and its subsidiaries.

42a

CROWN CENTRAL PETROLEUM COMPANY
AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEET
DECEMBER 31, 1965

ASSETS

CURRENT ASSETS

Cash		\$ 5,277,274	
Trade accounts receivable, net of allowance for doubtful accounts		6,403,337	
Inventories:			
Crude oil and refined products—at cost not in excess of market	\$ 9,094,137		
Materials and supplies— at cost	483,266	9,577,403	
TOTAL CURRENT ASSETS			\$21,258,014

OTHER ASSETS

48,048

PROPERTY, PLANT AND EQUIP-
MENT—substantially at cost
(Note A)

Land		4,811,974	
Oil and gas properties	7,552,864		
Refinery, pipe lines and other equipment	35,451,135		
	<u>43,003,999</u>		
Less allowances for depreciation and depletion	<u>25,009,497</u>	<u>17,994,502</u>	22,806,476

DEFERRED CHARGES

Prepaid expenses, etc.		154,760	
		<u>\$44,267,298</u>	

43a

LIABILITIES

CURRENT LIABILITIES

Long-Term debt—due within one year (Note A)	\$ 1,957,298	
Accounts payable and accruals	9,417,933	
Federal income taxes	414,227	
TOTAL CURRENT LIABILITIES		\$11,789,458

LONG-TERM DEBT (Note A)

8,902,614

CAPITAL STOCK AND SURPLUS

Common Stock—par value

\$5 per share:

Authorized 2,500,000 shares

issued and issuable

825,720 shares \$ 4,128,600

Less in treasury

742-35/75 shares 3,712 4,124,888

Surplus:

Capital surplus

2,539,655

Earned surplus

16,910,683 23,575,226\$44,267,298

NOTE TO FINANCIAL STATEMENTS

NOTE A—Long-term debt at December 31, 1965, consists of the following:

	PAYABLE	
	Within One Year	After One Year
4.7% notes secured by deeds of trust dated November 30, 1954 as supplemented and amended, due in quarter-annual installments of \$150,000. Specific oil and gas properties in Louisiana and Texas and 3,000 shares of capital stock of Crown-Rancho Pipe Line Corporation (a wholly-owned subsidiary) have been pledged as collateral on the deeds of trust	\$ 600,000	\$1,500,000
Notes under credit agreement dated January 1, 1961, as supplemented and amended:		
5¼% notes due in quarter-annual installments of \$50,000	200,000	750,000
5% notes due in quarter-annual installments of \$150,000	600,000	2,250,000
Notes on which specific service station properties or leaseholds have been pledged as collateral:		
Non-interest bearing notes issued March 15, 1963, due in monthly installments of \$6,765	81,179	500,601
4½% to 6% notes issued at various dates due in monthly installments covering principal and interest with final payments due at various dates between 1966 and 1980	416,119	3,482,013
Non-interest bearing notes dated December 31, 1963, due in quarter-annual installments of \$15,000	60,000	420,000
	<u>\$1,957,298</u>	<u>\$8,902,614</u>

The deeds of trust and credit agreement contain certain restrictions and stipulations on the declaration of dividends, retirement of stock, capital expenditures and the consolidated net working capital of the Company and its subsidiaries.

The statement of Crown's consolidated income for the year ending December 31, 1961, was as follows:

CROWN CENTRAL PETROLEUM CORPORATION
AND SUBSIDIARIES

Year Ended December 31, 1961

STATEMENT OF CONSOLIDATED INCOME

Gross operating income		\$66,410,463
Cost of sales and operating expenses (exclusive of depreciation, depletion, etc.):		
Cost of sales	\$57,290,501	
Selling and administrative expense	5,460,692	62,751,193
OPERATING PROFIT BEFORE DEPRECIATION, DEPLETION, ETC.		3,659,270
OTHER INCOME		
Discounts, rental, etc.		66,161
		<u>3,725,431</u>
OTHER DEDUCTIONS		
Employees' Pension Trust	192,500	
Employees' Savings Plan	118,388	
Employees' Security Expense	145,570	
Interest, discounts, exchange, etc.	614,462	
Bad debts	56,265	1,127,185
PROFIT BEFORE DEPRECIATION, DEPLETION, ETC.		<u>2,598,246</u>
DEDUCT		
Depreciation of plant and equipment	1,493,356	
Depletion	262,295	
Abandonments and sales of property, plant and equipment—net	278,080	2,033,731
INCOME BEFORE TAXES		<u>564,515</u>
TAXES ON INCOME—estimated:		
Refundable Federal income taxes		71,473
NET INCOME		<u>\$ 635,988</u>

The statement of Crown's consolidated income for the year ending December 31, 1965, was as follows:

**CROWN CENTRAL PETROLEUM CORPORATION
AND SUBSIDIARIES**

Year Ended December 31, 1965

STATEMENT OF CONSOLIDATED INCOME

Gross operating income		\$70,694,840
Cost of Sales and Operating Expenses (exclusive of depreciation, depletion, etc.):		
Cost of sales	\$58,464,739	
Selling and Administrative expense	6,970,908	65,435,647
OPERATING PROFIT BEFORE DEPRECIATION, DEPLETION, ETC.		5,259,193
OTHER INCOME		
Discounts, rentals, etc.		95,747
		5,354,940
OTHER DEDUCTIONS		
Employees' Pension Trust	350,000	
Employees' Savings Plan	124,636	
Employees' Security Expense	108,809	
Interest, discounts, exchange, etc.	790,890	
Bad debts	96,651	1,470,986
PROFIT BEFORE DEPRECIATION, DEPLETION, ETC.		3,883,954
DEDUCT		
Depreciation	1,843,690	
Depletion	311,516	
Abandonments and sales of property, plant and equipment—net	(200,075)	1,955,131
INCOME BEFORE TAXES		1,928,823
FEDERAL INCOME TAXES		419,161
NET INCOME		<u>\$ 1,509,662</u>

The following schedule represents for each month during the years 1964, 1965 and 1966 the number of shares of Crown common stock traded on the American Stock Exchange and the high, low and closing price per share during such month:

CROWN CENTRAL PETROLEUM

		High	Low	Close	Volume
1964	Jan.	14 6/8	13 7/8	13 7/8	7,300
	Feb.	13 6/8	12 5/8	12 5/8	6,000
	Mar.	13 2/8	12 2/8	12 5/8	6,400
	Apr.	13 7/8	12 4/8	13 1/8	11,200
	May	17 7/8	13 1/8	15 4/8	18,600
	June	15 3/8	14	14 3/8B.	4,800
	July	15 2/8	14 2/8	14 6/8	3,100
	Aug.	17 5/8	13 3/8	15 7/8	24,200
	Sept.	16 6/8	14	14 4/8B.	7,200
	Oct.	15 2/8	14	14 4/8	2,700
	Nov.	15	14 1/8	14B.	2,200
	Dec.	14 6/8	13 7/8	13 7/8	4,100
	Total				<u>97,800</u>
1965	Jan.	14 3/8	13 5/8	13 4/8B.	2,600
	Feb.	14 3/8	13 3/8	13 4/8B.	4,100
	Mar.	15 1/8	13 4/8	14 4/8	7,000
	Apr.	15 2/8	14	14 6/8	7,000
	May	14 6/8	14	14B.	6,400
	June	14	12	12 2/8	4,600
	July	13	12 1/8	12 6/8B.	4,200
	Aug.	13 3/8	12 5/8	13 1/8	2,100
	Sept.	14 4/8	13 1/8	13 5/8B.	4,400
	Oct.	14 2/8	13 3/8	14 2/8	3,100
	Nov.	14 2/8	13 5/8	13 6/8B.	2,100
	Dec.	17	13	15 2/8	12,300
	Total				<u>59,900</u>

48a

1966	Jan.	26	15 4/8	26	107,400
	Feb.	28 4/8	22 4/8	26	62,600
	Mar.	26 6/8	24	24 6/8	25,700
	Apr.	32 5/8	25	29	59,900
	May	32 6/8	23 7/8	30	27,200
	June	31 2/8	27 2/8	27 3/8	10,300
	July	29 6/8	26 2/8	27 1/8	9,800
	Aug.	28	20 5/8	20 6/8	16,100
	Sept.	23	20	21 3/8	9,900
	Oct.	23 5/8	20	23 4/8	8,400
	Nov.	30	23 4/8	27 6/8	16,200
	Dec.	33 3/8	26 3/8	29 6/8	33,800
	Total				<u>387,300</u>

A study of Crown as an oil and gas industry company in relation to other companies in the same industry shows that as of the valuation dates, July 8, 1965 and December 8, 1965, Crown common was substantially underpriced in public trading. This fact is illustrated by the following tabulation in which stock prices of Crown common and eight other oil companies were related to earnings, cash flow and book values:

49a

**CROWN CENTRAL PETROLEUM CORP. RATIOS OF STOCK PRICE TO EARNINGS, CASH FLOW
AND BOOK VALUE COMPARED TO SIMILAR RATIOS FOR EIGHT SMALL TO MEDIUM SIZE
OIL COMPANIES**

Company	For 7/8/65 Value Analysis					For 12/8/65 Value Analysis				
	Earned 1964	Cash Flow 1964	Book Value 12/31/64	Stock Price 7/8/65	Ratio Stock Price to Earn., Cash Flow & Bk. Value	Earned 1965	Cash Flow 1965	Book Value 12/31/65	Stock Price 12/8/65	Ratio Stock Price to Earn., Cash Flow & Bk. Value
Ashland Oil & Refining Co.	\$3.06	\$ 6.45	\$20.99	42	a = Price to Earnings b = Price to Cash Flow c = Price to Book Value	\$3.93	\$ 7.20	\$23.35	56 1/4	a 14.3 b 7.8 c 2.4
Continental Oil Co.	4.44	10.26	35.83	72 1/2	a 16.4 b 7.1 c 2.0	4.25	9.47	37.70	71 1/2	a 16.9 b 7.6 c 1.9
Yr. ended 5/31 Frontier Refining Co.	0.28	1.51	6.59	7 5/8	a-b-c	0.37	1.65	6.36	8 1/4	a 22.3 b 5.0 c 1.3
Hess Oil & Chemical Corp.	1.27	2.55	10.24	11	a 8.7 b 4.3 c 1.07	1.40	2.83	11.33	16 1/2	a 11.8 b 5.8 c 1.5
Kerr-McGee Corp. Yr. ended 6/30/64 & 12/31/65	3.60	6.60	24.69	52 3/4	a 14.6 b 8.0 c 2.1	3.76	6.94	26.05	70 1/4	a 18.7 b 10.1 c 2.7

Company	For 7/8/65 Value Analysis										For 12/8/65 Value Analysis									
	Earned 1964	Cash Flow 1964	Book Value 12/31/64	Stock Price 7/8/65	Ratio Stock Price to Earnings	Cash Flow & Bk. Value	Earned 1965	Cash Flow 1965	Book Value 12/31/65	Stock Price 12/8/65	Ratio Stock Price to Earnings	Cash Flow & Bk. Value	Earned 1965	Cash Flow 1965	Book Value 12/31/65	Stock Price 12/8/65	Ratio Stock Price to Earnings	Cash Flow & Bk. Value	Earned 1965	Cash Flow 1965
Marathon Oil Co.	4.05	7.09	34.44	56 ³ / ₄	a 14.0 b 8.0 c 1.6	4.08	6.95	36.02	56	a 13.7 b 8.1 c 1.6										
Signal Oil & Gas Co.	2.32	4.44	21.07	26	a 11.2 b 5.8 c 1.2	2.40	4.47	23.31	28 ⁷ / ₈	a 12.0 b 6.4 c 1.2										
Skelly Oil Co.	5.22	13.76	73.65	84 ⁷ / ₈	a 16.2 b 6.2 c 1.2	6.97	14.90	78.78	107 ¹ / ₂	a 15.4 b 7.2 c 1.4										
Simple average of ratios																				
Crown Central Petroleum Corp.	0.56	2.96	27.10	12 ⁵ / ₈	a 15.3 b 6.3 c 1.6	1.83	4.44	28.58	13 ⁷ / ₈	a 15.6 b 7.2 c 1.7										
						22.6 4.3 0.5														
Dow-Jones Industrial Index:																				
7/8/65 877.85) up 7.8%																				
12/8/65 946.60 {																				

Crown had unusually low earnings in 1964 (as shown by the record of \$0.98 per share in 1960; \$0.77 in 1961; \$1 in 1962; \$0.96 in 1963; \$0.56 in 1964 (later restated as \$0.42); and \$1.83 in 1965) and allowing for that anomaly Crown was priced at much lower earnings, cash flow, and book value multipliers than was general in the industry. In the pricing of the 402,851 shares of Crown common, representing 48.8 percent of outstanding shares, it is common practice to pay a premium price for a large block of common stock even when control is not an inherent value factor. However, Crown common was priced in the market at only 50 percent of book value. This was due to the light trading of Crown Central stock. Only 2,100 shares of its common were sold on the American Stock Exchange in the month of November 1965, which is a very low trading volume. Trading was sporadic. Sales of the stock were reported on only two days in the last half of November, and no sales at all were recorded from November 19 to 30, inclusive.

ATAPCO's holding of Crown common had a fair market value at least equal to its book value on July 8, 1965 and December 8, 1965. The book value of ATAPCO's holdings in Crown as of July 8, 1965, was \$10,917,262. Therefore, the fair market value of ATAPCO's holdings in Crown as of July 8, 1965, was \$10,917,262. The book value of ATAPCO's holdings in Crown as of December 8, 1965, was \$11,513,482. Therefore, the fair market value of ATAPCO's holdings in Crown as of December 8, 1965, was \$11,513,482.

The fair market values of ATAPCO's holdings in Indiana as of July 8, 1965, and December 8, 1965, were \$97,397,641 and \$98,048,695, respectively.

The fair market values of ATAPCO's holdings in Jersey as of July 8, 1965, and December 8, 1965, were \$11,667,521 and \$11,343,423, respectively.

ATAPCO was a combination operating and investment company. The public looking at ATAPCO's financial

position would see small amounts of earnings and small amounts of dividends. Earnings statements for the five years 1961 to 1965 show that, excluding dividends received, the company had a net operating deficit for each of the years. However, because of large charges for depreciation on tanker vessels and on assets in the oil and gas division, and amortizations of well drilling costs in the latter, the company had substantial deductions that involved no cash outlay. Utilizing dividends received and noncash part of expenses deducted, ATAPCO, in the period examined, had maintained a long-term practice of increasing investments in assets not part of its primary operating activity, the tanker transportation service. Some of the main investments made in the 1961 to 1965 period were:

\$ 7,027,000	in Oil and Gas Division properties
4,150,000	for acquisition of Kromex Corp. (September 30, 1964)
1,600,000	for acquisition of Atlas Sound Corp. (October 31, 1961)
404,395	for equity in Inntown Motor Hotel, Atlanta (February 28, 1965)
339,295	for equity in Americana Apartments, Dallas (April 30, 1965)
<u>\$13,520,690</u>	Total for the five items

ATAPCO made considerable business use of borrowed funds and in the five-year period, December 31, 1960 to December 31, 1965, long-term debt went from \$10,270,009 to \$19,744,678, an increase of \$9,474,669. Working capital in the same period went from a minus \$310,119 to \$7,498,745, an increase of \$7,808,864, which absorbed all but \$1,665,805 of the large addition to long-term debt. The policy of the company was to deemphasize earnings, deemphasize dividends actually paid and enhance the assets of ATAPCO. Because of this policy, a determination of the net book

value of ATAPCO provides the most accurate measure of the value of class A and class B common stock.

The underlying net asset value per share of class A and class B common stock of ATAPCO as of July 8, 1965, was as follows:

	As Reported In Balance Sheet	Market Price or Value 7/8/65	Correction to Reported Net Asset Value
<u>Adjustments To Securities Owned:</u>			
Standard Oil Co. (Indiana)			
Common Stock			
2,083,372 shares at			
47 1/16 on 7/8/65	\$ 5,834,530	\$98,048,695	\$+92,214,165
<u>Standard Oil Co. (New Jersey)</u>			
Common Stock			
148,159 Shares at			
76 9/16 on 7/8/65	7,304,633	11,343,423	+ 4,038,790
<u>Union Trust Co.</u>			
Common Stock			
28,710 Shares at			
63 1/4 on 7/8/65	673,405	1,815,907	+ 1,142,502
<u>U.S. Fidelity & Guaranty Co.</u>			
Common Stock			
4,641 Shares at			
56 5/8 on 7/8/65	53,331	262,797	+ 209,466
<u>Crown Central Petroleum Corp.</u>			
Common Stock			
402,851 Shares (48.8% of outstanding) at			
27.10 Book value 12/31/64	624,579	10,917,262	+10,292,683
<u>Charles Street Development Corp.</u>			
450 Shares Common out of 1,800 Shares Outstanding (or 25%) Agreed Equity Value of \$1,800,000 for year 1965	90,000	450,000	+ 360,000

54a

Oil & Gas Properties	7,809,516	4,000,000	- 3,809,516
Tanker Vessels	3,701,654	4,299,899	+ 598,245
Atlas Sound Division	1,463,302	2,660,000	+ 1,196,698
Kromex Division	3,745,190	4,150,000	+ 404,810
Net Adjustment to Net Asset Value			+106,647,843
Net Asset Value on Books			21,384,520
Adjusted Net Asset Value: Total			+128,032,363
Less: 116,496 outstanding shares of 5% Cumulative Class B First Preferred and 391,092 outstanding shares of 6% Cumulative Second Preferred at \$10 per share Redemption Value			- 5,075,880
Underlying Net Asset Value			122,956,483
Underlying Net Asset Value Per Share of Class A and Class B Common			169

The underlying net asset value per share of class A and class B common stock of ATAPCO as of December 8, 1965, was as follows:

	As Reported In Balance Sheet	Market Price or Value 12/8/65	Correction to Reported Net Asset Value
Adjustments to Securities Owned:			
Standard Oil Co. (Indiana)			
Common Stock			
2,083,372 Shares at			
46 3/4 on 12/8/65:	\$ 5,834,530	\$97,397,641	\$+91,563,111
Standard Oil Co. (New Jersey)			
Common Stock			
148,159 Shares at			
78 3/4 on 12/8/65:	7,374,147	11,667,521	+ 4,293,374

55a

Union Trust Co.			
Common Stock			
28,710 Shares at			
67 on 12/8/65:	673,405	1,923,570	+ 1,250,165
U.S. Fidelity & Guaranty Co.			
Common Stock			
4,641 Shares at			
64 7/16 on 12/8/65:	53,331	299,054	+ 245,723
Crown Central Petroleum Corp.			
Common Stock			
402,851 Shares (48.8% of			
outstanding) at \$28.58 book			
value 12/31/65	624,579	11,513,482	+10,888,903
Charles Street Development Corp.			
450 Shares Common out of			
1,800 Shares Outstanding (or			
25%) Agreed Equity Value of			
\$1,800,000 for year 1965	90,000	450,000	+ 360,000
Oil & Gas Properties	7,762,205	4,000,000	- 3,762,205
Tanker Vessels	4,217,133	4,309,302	+ 92,169
Atlas Sound Division	1,881,629	3,100,000	+ 1,218,371
Kromex Division	3,697,783	4,150,000	+ 452,217
Net Adjustment to Net Asset Value			+106,601,828
Net Asset Value on Books			23,133,266
Adjusted Net Asset Value: Total			129,735,094
Less: 116,496 Outstanding Shares of 5% Cumulative Class B First Preferred and 391,092 Outstanding Shares of 6% Cumulative Second Preferred at \$10 Per Share Redemption Value			- 5,075,880
Underlying Net Asset Value			124,659,214
Underlying Net Asset Value Per Share of Class A and Class B Common			171

The value at the date of death of Dr. Thalheimer of the taxable portion of the death benefit paid by Union Trust Co. of Maryland, trustee under American Trading and Production Corporation Pension Trust Agreement dated December 31, 1948, to Herbert R. Thalheimer, beneficiary, by reason of the death of Dr. Thalheimer was \$12,225.77.

On the date of his death, Dr. Thalheimer owed Brandeis University the sum of \$400, which debt was paid on May 5, 1967. Such debt was in addition to indebtedness aggregating \$46,917.03 which were deducted on Schedule K to the Federal estate tax return, and the total indebtedness owing by Dr. Thalheimer on the date of his death and subsequently paid was \$47,317.03.

Through September 20, 1972, the amounts paid on account of executors' commissions and other expenses incurred in the administration of Dr. Thalheimer's estate aggregated \$54,436.64.

On December 30, 1963, and December 28, 1964, Mrs. Blaustein made gifts in contemplation of death having an aggregate value of \$150,000 (\$75,000 for each year). There were no other transfers in contemplation of death by Mrs. Blaustein.

Through September 20, 1972, the amounts paid on account of executors' commissions and other expenses incurred in the administration of Mrs. Blaustein's estate aggregated \$39,302.83.

ULTIMATE FINDINGS OF FACT

1. The fair market value of Dr. Thalheimer's 15,367 shares of class A common stock of ATAPCO as of July 8, 1965, was \$112 per share with a total fair market value of \$1,721,104.

2. The fair market value of Dr. Thalheimer's 28,745 shares of class B common stock of ATAPCO as of July 8,

1965, was \$106 per share with a total fair market value of \$3,046,970.

3. The fair market value of Mrs. Blaustein's 9,700 shares of class A common stock of ATAPCO as of December 8, 1965, was \$113 per share with a total fair market value of \$1,096,100.

4. The fair market value of Mrs. Blaustein's 29,100 shares of class B common stock of ATAPCO as of December 8, 1965, was \$107 per share with a total fair market value of \$3,113,700.

OPINION

Doctor Alvin Thalheimer died on July 8, 1965, at which time he owned 15,367 shares of class A common stock and 28,745 shares of class B common stock of American Trading and Production Corp. (ATAPCO). Such holdings represented approximately 8.3 percent and 5.3 percent, respectively, of the total shares of each such class then outstanding. Mrs. Henrietta Blaustein died on December 8, 1965, at which time she owned 9,700 shares of class A ATAPCO common stock and 29,100 shares of class B ATAPCO common stock equal to 5.2 percent and 5.4 percent, respectively, of the shares of each class then outstanding. Class A common stock had exclusive voting privileges and the class B common stock had no voting rights. In all other respects, the class A and class B ATAPCO common stock had identical rights. These blocks represented minority holdings in a privately held corporation in which all other shares were owned or controlled by members of the Blaustein family.

In his statutory notice of deficiency, the Commissioner determined that the fair market value of the class A and class B ATAPCO common stock owned by Dr. Thalheimer at death was \$167 per share rather than \$60 per share as reported on the estate tax return. Similarly, the

Commissioner determined in his statutory notice of deficiency that the fair market value of the class A and class B ATAPCO common stock owned by Mrs. Blaustein at death was \$168 per share rather than \$60 per share as reported on the estate tax return. The only issue remaining in these cases concerns the fair market value of the decedents' shares of class A and class B ATAPCO common stock on the dates of their deaths—July 8, and December 8, 1965.

At the dates of death of Dr. Thalheimer and Mrs. Blaustein, ATAPCO was a diversified corporation whose operations included:

1) a Marine Division owning U.S. flag tanker vessels engaged in coastal and worldwide transportation of petroleum, petroleum products, other liquid materials and grain;

2) an Oil and Gas Division which explored for and produced oil and gas in the United States and was exploring for oil and gas in Canada;

3) a Real Estate Division which owned two real estate properties and had a 25 percent interest in Charles Street Development Corp., which held title to the Blaustein Building located at Fayette and Charles Streets in Baltimore and held interests in other nearby parcels; and

4) the Manufacturing Division consisting of Atlas Sound which manufactured microphone stands, related accessories and a line of horn-type loudspeakers, and Kromex which manufactured kitchenware and giftware. In addition to the operating divisions, ATAPCO owned sizeable blocks of common stock in other corporations, most of which were not freely marketable.

The relevant facts with regard to the operating divisions and the investments of ATAPCO are set forth in great detail in the findings of fact and no useful purpose would be served by restating them here. However, the following schedule identifies the components of the various operating divisions and the investments which are in controversy.

AMERICAN TRADING AND PRODUCTION CORPORATION (ATAPCO)

Division	Agreed Value		Petitioners' Valuation		Respondent's Valuation		Value Found	
	7-8-65	12-8-65	7-8-65	12-8-65	7-8-65	12-8-65	7-8-65	12-8-65
Marine	\$4,299,899	\$4,309,202					\$4,299,899	\$4,309,202
Oil & Gas	4,000,000	4,000,000					4,000,000	4,000,000
Real Estate								
Charles Street			\$270,000	\$270,000	\$450,000	\$450,000	450,000	450,000
Dinkler Motor								
Hotel (Atlanta) & Americana								
Apts. (Dallas)	728,593	728,593					728,593	728,593
Wilshire								
Properties	225,000	225,000					225,000	225,000
Manufacturing								
Kromex	4,150,000	4,150,000					4,150,000	4,150,000
Atlas Sound	2,660,000	3,100,000					2,660,000	3,100,000
Blocks of Stock in other Corporations:								
Indiana			59,689,000	58,438,000	98,048,695	97,397,641	98,048,695	97,397,641
New Jersey			8,933,000	9,144,000	11,343,423	11,667,521	11,343,423	11,667,521
Crown Central			3,052,000	3,384,000	10,917,262	11,513,482	10,917,262	11,513,482
Union Trust			1,050,000	1,110,000	1,815,907	1,923,570	1,815,907	1,923,570
U.S. Fidelity & Guaranty			210,000	238,000	262,797	299,054	262,797	299,054

The parties produced well-qualified expert witnesses who testified at length as to their opinions of the fair market value of the class A and class B ATAPCO common stock owned by Dr. Thalheimer and Mrs. Blaustein on the dates of their respective deaths. Petitioners' expert was of the opinion that because ATAPCO was engaged in many diverse activities, it was appropriate to value the components separately. His valuations of the operating divisions are based on stipulated values of the components and the values he accorded the stock holdings in other corporations represent the amounts which could have been realized from the sale of such holdings on the respective dates of death. In arriving at the per share values of class A and class B common, petitioners' expert considered market prices and price earnings ratios for shares of publicly held corporations engaged in investments and operations regarded by him as comparable to ATAPCO from an investor's standpoint.

Emphasizing that ATAPCO's 25 percent interest in Charles Street Development Corp. was a minority interest subject to certain restrictions on sale, petitioners' expert applied a 40 percent discount to the net asset value, resulting in a value of \$270,000 (60 percent of ATAPCO's 25 percent interest in the \$1,800,000 stipulated value of Charles Street) on the respective dates of death of the decedents. Petitioners' expert valued ATAPCO's Standard Oil Co. (Indiana) holdings at \$59,689,000 on July 8, 1965, and \$58,438,000 on December 8, 1965. These valuations represent a 40 percent discount from the New York Stock Exchange (NYSE) closing prices on the valuation dates for blockage, distribution expenses, investment restrictions and capital gains tax liability. Similarly, allowing a discount of 5 percent from the closing prices on the NYSE on the respective valuation dates and the capital gains tax liability on disposition, petitioners' expert valued ATAPCO's 148,159 common shares of Standard Oil Co. (N.J.) on July 8,

and December 8, 1965, at \$8,933,000 and \$9,144,000, respectively. ATAPCO's holdings in Crown Central were valued at \$3,052,000 on July 8, 1965, and \$3,384,000 on December 8, 1965, after discounting the prevailing market price on those dates by 40 percent for blockage, distribution expenses and capital gains tax liability. ATAPCO's ownership of 28,710 shares of capital stock of Union Trust Co. of Maryland was valued at \$1,050,000 and \$1,110,000 on July 8 and December 8, 1965, respectively. These valuations take into account a 35 percent discount from the mean of the bid and asked prices on those dates and represent a discount for blockage, distribution expenses, investment restrictions and capital gains tax liability. Based on the mean of bid and asked prices less capital gains liability, ATAPCO's holdings in United States Fidelity & Guaranty Co. were valued at \$210,000 on July 8, 1965, and \$238,000 on December 8, 1965.

Having valued the contested divisions (and components thereof) using the above-described assumptions and procedures, petitioners' expert computed the total value of ATAPCO's underlying assets by adding the values of the contested divisions (and components) to the agreed values of the uncontested divisions (and components). From this amount he deducted total unallocated liabilities and preferred stock valued at its redemption price in arriving at the net equity applicable to common stock. By dividing the latter amount by the combined outstanding shares of class A and class B common, petitioners' expert determined the net equity per share of such stock to be \$99.78 on July 8, 1965 and \$98.26 on December 8, 1965.

Having ascertained the net equity applicable to class A and class B common, petitioners' expert was of the opinion that these blocks of stock must be discounted because they represent unmarketable minority holdings in a privately held, closed corporation. After analyzing the relationship between the value of minority holdings and underlying

asset values in five unregulated investment companies considered by him to be comparable to ATAPCO, petitioners' expert concluded that the class A voting shares would sell in the market at a discount of 44 percent from net asset value after provision for taxes on unrealized appreciation and the class B nonvoting shares should be discounted 46 percent. Reflecting these discounts, petitioners' expert was of the opinion that the fair market values of the class A and class B shares at the valuation dates were:

Item	Estate of Alvin Thalheimer	Estate of Henrietta Blaustein
Valuation Date	July 8, 1965	Dec. 8, 1965
Shares of Class A		
Common	15,367	9,700
Fair Market Value:		
per share	\$ 55.88	\$ 55.03
TOTAL	<u>\$ 858,707.96</u>	<u>\$ 533,791.00</u>
Shares of Class B		
Common	28,745	29,100
Fair Market Value:		
per share	\$ 53.88	\$ 53.06
TOTAL	<u>\$1,548,780.60</u>	<u>\$1,544,046.00</u>

To complement this opinion, petitioners' expert also constructed a hypothetical investment portfolio providing for direct ownership in shares of stock in Indiana, Jersey, Crown, Union Trust and U.S.F. & G. plus shares of stock in publicly traded corporations which were engaged in businesses similar to that of ATAPCO's several operating divisions. If instead of purchasing shares of ATAPCO, direct purchases had been made in proportion to the relative values of ATAPCO's interests in other corporations and its several operating divisions, the hypothetical portfolio would have provided the hypothetical investor a

significantly higher dividend yield without jeopardizing any benefits to be derived from capital appreciation and the investor would enjoy a readily marketable liquid portfolio instead of a minority interest in a closely held corporation.

While conceding that it is normal procedure to emphasize earnings or profits and dividends in appraisals of operating companies, respondent's expert was of the opinion that based on the company's history and its operating and financial policies and practices, ATAPCO more nearly resembled an investment company or fund that concentrated on growth assets and deemphasized current earnings. Thus, in valuing the blocks of stock in issue, respondent's expert primarily disregarded earnings and dividends and relied more heavily on the underlying values of ATAPCO's net assets as the proper measure of the per share value of class A and class B common stock.

Like petitioners' expert, respondent's expert submitted his values for the contested divisions (and components). However, unlike petitioners' expert, respondent's expert applied no discount to the net asset value of ATAPCO's minority holding in Charles Street Development Corp. thereby arriving at a value of \$450,000 (25 percent interest in the \$1,800,000 stipulated value of Charles Street). Similarly, respondent's expert valued ATAPCO's holdings in Indiana and Jersey by multiplying the number of such shares held times the means of high and low prices of such stock on the NYSE on July 8, and December 8, 1965, respectively, without applying any discount for blockage, distribution expenses, investment restrictions and capital gains tax. Respondent's expert valued ATAPCO's holdings in Union Trust and U.S.F. & G. by multiplying the number of shares held times the mean of the bid and asked prices on July 8, and December 8, 1965, without applying any of the discounts previously discussed. Finally, after comparing Crown Central to eight other oil companies which he deemed comparable, respondent's expert concluded that current quoted prices on the American Stock Exchange

substantially understated the value of ATAPCO's 48.8 percent holding of Crown Central common. Ignoring the fact that such a large block may command a premium, respondent's expert concluded that ATAPCO's holding of Crown Central common had a fair market value at least equal to book value on July 8, and December 8, 1965, absent any of the above-described discounts.

Having valued the contested divisions (and components thereof) using the above-described assumptions and techniques, respondent's expert computed the total value of ATAPCO's underlying assets by adding the value of the contested divisions (and components) to the agreed values of the uncontested divisions (and components). From this amount he deducted total unallocated liabilities but initially neglected to deduct the preferred stock valued at its redemption price in arriving at net asset value per share of common. Allowing for this error and dividing the net asset value by the combined outstanding shares of class A and class B common, respondent's expert determined the net asset value per share of such stock to be \$169 on July 8, 1965, and \$171 on December 8, 1965. After analyzing the relationship between the value of minority holdings and underlying asset values in nine publicly traded, regulated closed-end investment companies considered comparable to ATAPCO, respondent's expert concluded that the class A and class B common would sell at a discount of 5 percent from net asset value. Applying this 5 percent discount to the above-stated values results in a value of \$160 for such stock on July 8, 1965, and \$162 for such stock on December 8, 1965.

Recognizing that ATAPCO common was not registered and had never been publicly traded, respondent's expert deemed it necessary to allow a further discount for what he called lack of marketability. A 9 percent discount was determined by simulating a registration and public offering and was comprised of 5 percent underwriting discounts

and commissions, 2 percent sellers' expense of offering and 2 percent risk of market change. Applying this discount, the value of ATAPCO common stock per respondent's expert was \$145 on July 8, 1965, and \$147 on December 8, 1965.

Finally, respondent's expert discounted the nonvoting class B common by 5 percent in recognition that it may be less marketable than class A voting common. To summarize, respondent's expert valued ATAPCO common as follows:

Item	Estate of	Estate of
	Alvin Thalheimer	Henrietta Blaustein
Valuation Date	July 8, 1965	Dec. 8, 1965
Shares of Class A		
Common	15,367	9,700
Fair Market Value:		
per share	\$ 145	\$ 147
TOTAL	<u>\$2,228,215</u>	<u>\$1,425,900</u>
Shares of Class B		
Common	28,745	29,100
Fair Market Value:		
per share	\$ 137	\$ 139
TOTAL	<u>\$3,938,065</u>	<u>\$4,044,900</u>

A determination of the fair market value of closely-held stock is purely factual. Since valuation is not an exact science, no formula can be devised that will be generally applicable to all cases. The applicable statute,¹ respondent's regulations² and published rulings³ and the reported cases offer no more than generalized guidelines. While we do

¹ Int. Rev. Code of 1954, § 2031.

² Section 2031-2(f), Estate Tax Regulations.

³ Rev. Rul. 59-60, 1959-1 C.B. 237.

not entirely agree with the appraisals offered by petitioners or respondent, the extensive financial data and expert appraisals establish a reasonable range within which the fair market value of the stock must lie.

We have found as an ultimate fact that ATAPCO class A common had a fair market value of \$112 per share on July 8, 1965, and \$113 per share on December 8, 1965, and that ATAPCO class B common had a fair market value of \$106 per share on July 8, 1965, and \$107 on December 8, 1965. In making our ultimate findings, we carefully considered all the evidence contained in the entire record including the stipulations of fact, the testimony of all witnesses presented by the parties and the numerous exhibits. We have analyzed all the evidence and given due weight to each item with proper regard for the fact that the burden of proof is on the petitioners. Among the factors considered in valuing the stock are the following: the organization and history of ATAPCO; its capital structure, financial condition, the nature of its business, its policies and the overall manner in which the business was operated; the number of outstanding shares of each class of ATAPCO's capital stock and the identity of the shareholders; the fact that ATAPCO's shares were not listed on any exchange, were not dealt with through brokers or in over-the-counter trading, and had not been the subject of any sales; the character and amounts of ATAPCO's assets and liabilities; the book value and fair market value of its underlying assets; the amounts and trends of its annual earnings and prospects for future earnings; its dividend-paying history, and the prospects for future dividend payments; market prices of stock of comparable corporations; alternative investment possibilities; and all other factors which in our view or that the witnesses were relevant and material to the value of such stock on the respective dates. In weighing the opinions of the expert witnesses, we considered the following: qualifications and demeanor; familiarity with

ATAPCO, its underlying assets and comparable companies; the soundness of the valuation method employed; and skill in assembling, analyzing and weighing supporting data.

Pursuant to making their appraisals, the expert witnesses for both parties initially endeavored to ascertain the underlying net asset value per share of class A and class B common stock.⁴ We have found that it was ATAPCO's policy to deemphasize earnings and dividends and to concentrate on growth and long-range capital appreciation. That being so, we agree that the underlying net asset value per share should be determined and that considerable weight should be given to the values thus obtained. *See Hamm v. Commissioner*, 325 F. 2d 934 (C.A. 8, 1963), affirming a Memorandum Opinion of this Court. However, in ascertaining the fair market value of the underlying assets of ATAPCO, petitioners' expert applied discounts to various assets for such factors as blockage, distribution expenses, investment restrictions, and/or capital gains tax. The record clearly shows that ATAPCO is a diverse, viable going concern and there is no evidence of a plan for its liquidation, voluntary or otherwise. Under these circumstances, the discounts applied by petitioners' expert in ascertaining underlying net asset value per share of class A and class B ATAPCO common stock were inappropriate and improper. *Estate of Henry E. Huntington*, 36 B.T.A. 698 (1937); *Richardson v. Commissioner*, 151 F. 2d 102 (C.A. 2, 1946), affirming a Memorandum Opinion of this Court; *Estate of Frank A. Cruikshank*, 9 T.C. 162 (1947). Thus, as set out in our findings of fact, we accept respondent's above-described valuation of ATAPCO's interests

⁴ We use the term "underlying net asset value per share of class A and class B ATAPCO common stock" to mean the fair market value of ATAPCO's total assets minus its total liabilities and preferred stock valued at its redemption price divided by the total number of shares of class A and class B ATAPCO common stock outstanding.

in Charles Street, Indiana, Jersey, Union Trust and U.S.F. & G.

This leaves Crown as the sole remaining contested component. After considering all the evidence presented by both parties regarding the value of ATAPCO's effective controlling interest in Crown, we accept respondent's valuation because we were convinced that the agreed market price of Crown stock on the two valuation dates is not a true indicator of Crown's value because we are satisfied that on the two dates in question the Crown common was at least equal in value to the book value of Crown's assets as shown on its published balance sheets set out in our findings of fact.

Having found the fair market value of all contested divisions (and components), the next step is to add these amounts to the stipulated fair market values of the uncontested divisions (and components) to obtain the total fair market value of ATAPCO's underlying assets. The total fair market value of ATAPCO's underlying assets minus its total unallocated liabilities and preferred stock valued at its redemption price yields the underlying net asset value which must be divided by the total number of class A and class B ATAPCO common stock outstanding which yields the underlying net asset value per share of class A and class B ATAPCO common. Since we found respondent's valuation of the contested divisions (and components) to be the correct measure of their fair market value, the underlying net asset values must necessarily be the same as those computed by respondent.

Having determined that the underlying net asset value of class A and class B ATAPCO common to be \$169 on July 8, 1965, and \$171 on December 8, 1965, we must next determine the proper discount to be applied against this underlying net asset value to arrive at the fair market value of the class A and class B ATAPCO common stock for estate tax purposes.

As previously discussed, after considering the relative advantages of alternative investments and after analyzing the relationship between the value of minority holdings and underlying asset values in five publicly traded, unregulated investment companies considered comparable to ATAPCO, petitioners' expert concluded that the class A voting common should be discounted 44 percent and that the class B nonvoting common should sell at a discount of 46 percent from the underlying net asset values per share to reflect the fair market value of decedents' unmarketable, minority interests in a privately held, closed corporation. After analyzing the relationship between the value of minority holdings and underlying asset values in some publicly traded, regulated closed-end investment companies deemed comparable to ATAPCO and allowing for lack of marketability, respondent's expert concluded that class A voting common stock should be allowed a total of 14 percent in discounts and that class B nonvoting stock should be allowed a total of 19 percent in discounts from the underlying net asset value per share. While we have found both experts' comparisons helpful in setting a reasonable range within which the fair market value of ATAPCO's stock must lie, we think that such stock is much less comparable to that of the nine companies used in respondent's appraisal than he would have us believe.⁵ Petitioners' comparables are not unassailable.

Thus, we do not agree with either appraisal but, instead, believe the fair market value of the decedents' holdings in ATAPCO common stock falls well inside the two extremes advocated by the parties. Based on our careful consideration of the entire record, we find and hold that class A ATAPCO voting common stock should be discounted at 34

⁵ Foremost among the distinctions are the ready marketability of the shares of those nine companies and their qualification, unlike ATAPCO, as regulated investment companies. See Int. Rev. Code of 1954, §§ 851-855.

percent from the underlying net asset value per share on July 8, and December 8, 1965, and that class B ATAPCO nonvoting common should be discounted at 37 percent from the underlying net asset value per share on those dates. To summarize, we find and hold that the fair market values of the ATAPCO common stock are as follows:

Item	Estate of Alvin Thalheimer	Estate of Henrietta Blaustein
Valuation Date	July 8, 1965	Dec. 8, 1965
Shares of Class A		
Common	15,367	9,700
Fair Market Value:		
per share	\$ 112	\$ 113
TOTAL	<u>\$1,721,104</u>	<u>\$1,096,100</u>
Shares of Class B		
Common	28,745	29,100
Fair Market Value:		
per share	\$ 106	\$ 107
TOTAL	<u>\$3,046,970</u>	<u>\$3,113,700</u>

We believe these values represent the price that a willing buyer would have paid a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the relevant facts.

Decisions will be entered under Rule 155.

APPENDIX B

Decisions of the United States Tax Court

UNITED STATES TAX COURT

Docket No. 5684-69

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the Court filed August 5, 1974, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in estate tax due from the petitioner in the amount of \$676,349.71.

(signed) WILLIAM A. GOFFE
Judge.

Entered: DEC. 18, 1974

• • • •

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

72a

JOHN S. McDANIEL, JR. John S. McDaniel, Jr. Counsel for Petitioner	MEADE WHITAKER Chief Counsel Internal Revenue Service
LAWRENCE A. KAUFMAN Lawrence A. Kaufman Counsel for Petitioner Cable, McDaniel, Bowie & Bond The Blaustein Building Baltimore, Maryland 21201 (301) 752-3650	By: (signed) GEORGE J. RABIL George J. Rabil Assistant Regional Counsel 422 Universal North Bldg. 1875 Connecticut Avenue, N.W Washington, D.C. 20009 (202) 964-2064

73a

UNITED STATES TAX COURT

Docket No. 1661-70

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K. BLAUSTEIN
and RUTH B. ROSENBERG, SURVIVING EXECUTRICES,
Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the Court filed August 5, 1974,
and incorporating herein the facts recited in the respond-
ent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in estate
tax due from the petitioner in the amount of \$481,228.02.

(signed) WILLIAM A. GOFFE
Judge.

Entered: DEC. 18, 1974

* * * *

It is hereby stipulated that the foregoing decision is in
accordance with the opinion of the Court and the respond-
ent's computation, and that the Court may enter this deci-
sion, without prejudice to the right of either party to con-
test the correctness of the decision entered herein.

JOHN S. McDANIEL, JR. John S. McDaniel, Jr. Counsel for Petitioner	MEADE WHITAKER Chief Counsel Internal Revenue Service
LAWRENCE A. KAUFMAN Lawrence A. Kaufman Counsel for Petitioner Cable, McDaniel, Bowie & Bond The Blaustein Building Baltimore, Maryland 21201 (301) 752-3650	By: (signed) GEORGE J. RABIL George J. Rabil Assistant Regional Counsel 422 Universal North Bldg. 1875 Connecticut Avenue, N.W Washington, D.C. 20009 (202) 964-2064

APPENDIX C

Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1413

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX,
Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

No. 75-1414

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K. BLAUSTEIN,
and RUTH B. ROSENBERG, SURVIVING EXECUTRICES,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

Appeal from the United States Tax Court in Washington, D.C. William A. Goffe, Tax Court Judge.

Argued December 4, 1975 Decided April 13, 1976

Before HAYNSWORTH, Chief Judge, CRAVEN and BUTZNER,
Circuit Judges

Walter J. Rockler (Carolyn E. Agger, Lauralee A. Matthews, John S. McDaniel, Jr., Lawrence A. Kaufman; Arnold and Porter; Cable, McDaniel, Bowie and Bond on brief) for Appellants; Michael L. Paup, Attorney,

Tax Division, United States Department of Justice (Scott P. Crampton, Assistant Attorney General, Gilbert E. Andrews, and Stanley S. Shaw, Jr., Attorneys, Tax Division, United States Department of Justice).

PER CURIAM:

The taxpayers, at the time of their deaths, were stockholders of a closely held corporation, American Trading and Production Corporation (Atapco). A dispute arose as to the valuation of those shares.

The Tax Court valued the Atapco shares by valuing Atapco's underlying assets to which it applied a discount figure of 34% because of the lack of a ready market for the Atapco stock and the minority position of the taxpayers. In this we find no error and, upon full consideration of the several contentions of the taxpayers, we affirm the Tax Court's judgment for the reasons stated by it, save in one respect. 33 T.C.M. 877 (August 5, 1974).

Atapco owned a 25% interest in another corporation, Charles Street Development Corporation. Twenty-five percent of Charles Street's equity in its net assets was \$450,000 which was included in Atapco's net worth. The Charles Street stockholders had been making open advances to Charles Street, however, and on the dates of the death of the taxpayers, those advances by Atapco apparently amounted, respectively, to \$649,000 and \$644,000. Those amounts were also included in Atapco's net worth. A dispute arose in this court as to whether the treatment of the stockholders advances to Charles Street resulted in duplicating adjustments to Atapco's net worth, or overstatement of Atapco's real interest in Charles Street by the amount of the debt, or some portion of it.

This matter was not explicitly considered by the Tax Court, and we remand the cases to it for its consideration to the end that the possibility of a mistake will be avoided.

REMANDED.

APPENDIX D

Denial of Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 75-1413

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX,
Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

No. 75-1414

ESTATE OF HENRIETTA G. BLAUSTEIN, HILDA K. BLAUSTEIN,
and RUTH B. ROSENBERG, SURVIVING EXECUTRICES,
Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

Order

Upon consideration of the petition for rehearing, no request for a poll of the court being made on the suggestion for rehearing *en banc*, and with the concurrence of Judge Craven and Judge Butzner,

IT IS ORDERED that the petition be, and the same is hereby, denied.

FOR THE COURT
/s/ CLEMENT T. HAYNSWORTH
Chief Judge, Fourth Circuit

May 24, 1976
Filed May 26, 1976
William K. Slate II
Clerk

APPENDIX E

Statute and Regulations Involved

Internal Revenue Code

Sec. 2031. Definition of Gross Estate.

(a) GENERAL.—The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) VALUATION OF UNLISTED STOCK AND SECURITIES.—In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

Treasury Regulations

Sec. 20.2031-1(b). Valuation of property in general. The value of every item of property includible in a decedent's gross estate under sections 2031 through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

• • •

Sec. 20.2031-2. **Valuation of stocks and bonds**—(a) *In general.* The value of stocks and bonds is the fair market value per share or bond on the applicable valuation date.

(b) *Based on selling prices*—(1) In general, if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. If there were no sales on the valuation date but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date.

* * *

(c) *Based on bid and asked prices.* If the provisions of paragraph (b) of this section are inapplicable because actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period. The average is to be determined in the manner described in paragraph (b) of this section.

* * *

(e) *Where selling prices or bid and asked prices do not reflect fair market value.* If it is established that the value of any bond or share of stock determined on the basis of selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not reflect the fair market value thereof, then some reasonable modification of that basis or other relevant facts and elements of

value are considered in determining the fair market value. Where sales at or near the date of death are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of stock to be valued in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the executor can show that the block of stock to be valued is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued shall be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its true value.

(f) *Where selling prices or bid and asked prices are unavailable.* If the provisions of paragraphs (b), (c), and (d) of this section are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

(1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

(2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the "other relevant factors" referred to in subparagraphs (1) and (2) of this paragraph are: the good

will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case.

* * *

No. 76-222

Supreme Court, U. S.

FILED

OCT 6 1976

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

SCOTT P. CRAMPTON,
Assistant Attorney General,

MICHAEL L. PAUP,
STANLEY S. SHAW, JR.,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-222

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (Pet. App. A 1a-70a) are not officially reported. The opinion of the court of appeals (Pet. App. B 74a-75a) is not yet officially reported.

JURISDICTION

The judgment of the court of appeals was entered on April 13, 1976. A petition for rehearing was denied on May 24, 1976. The petition for a writ of certiorari was filed on August 14, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Tax Court correctly valued, for federal estate tax purposes, stock held by the decedents.

STATUTE AND REGULATIONS INVOLVED

Section 2031 of the Internal Revenue Code of 1954 (26 U.S.C.) and Treasury Regulations on Estate Tax (1954 Code), Sections 20.2031-1(b) and 20.2031-2(f) (26 C.F.R.), are set forth at Pet. App. E 77a-80a.

STATEMENT

Alvin Thalheimer and Henrietta Blaustein died on July 8 and December 8, 1965, respectively. At the time of their deaths, they each owned shares of both Class A and Class B common stock of American Trading and Production Corp. (ATAPCO), a closely-held corporation (Pet. App. A 57a).

The number of shares and the percentage interest represented by their holdings were as follows (Pet. App. A 57a):

	<i>Class</i>	<i>Number of Shares</i>	<i>Percentage Interest</i>
Thalheimer	A	15,367	8.3
	B	28,745	5.3
Blaustein	A	9,700	5.2
	B	29,100	5.4

On the estate tax returns, the executors of the estates both reported the value of the Class A and B ATAPCO stock at \$60 per share, as of the dates of the decedents' deaths. On audit, the Commissioner of Internal Revenue determined that the value as of the dates of Thalheimer's and Blaustein's deaths was \$167 and \$168, respectively (Pet. App. A 57a-58a). After a trial, at which both parties presented testimony of valuation experts and numerous exhibits, the Tax Court determined that the fair market

values of the ATAPCO stock were as follow (Pet. App. A 70a):

	<i>Estate of Alvin Thalheimer</i>	<i>Estate of Henrietta Blaustein</i>
Valuation Date	July 8, 1965	December 8, 1965
Class A Common		
Fair Market		
Value per share	\$112	\$113
Class B Common		
Fair Market		
Value per share	\$106	\$107

The court stated that "[w]e believe these values represent the price that a willing buyer would have paid a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of all the relevant facts" (Pet. App. A 70a).

In the Tax Court, both estates and the Commissioner agreed that the proper starting point was a valuation of the assets owned by ATAPCO. On the relevant dates, ATAPCO owned large blocks of stock in Standard Oil of Indiana, Standard Oil of New Jersey, United States Fidelity and Guaranty Corporation, and Union Trust Company of Maryland; it also held a controlling interest in Crown Central Petroleum Company (Pet. App. A 53a; R. 547e; Pet. 9).¹

The Tax Court began the valuation process by determining the market prices for ATAPCO's stockholdings on the relevant dates. The court added to that amount the book value of ATAPCO's holdings in Crown Petroleum and the

¹"R." references are to the record appendix in the court of appeals.

stipulated value of ATAPCO's other assets on the relevant dates. It then subtracted ATAPCO's liabilities to obtain a preliminary net asset valuation for ATAPCO. From this valuation, the court then determined the preliminary net asset value of the shares owned by the decedents (Pet. App. A 66a-68a).

The court discounted that preliminary per share figure by from 34 to 37 percent to reflect the lack of ready marketability of the unregistered ATAPCO shares and the minority position of the estates' shares. It concluded that the shares had a fair market value of approximately \$110 per share (Pet. App. A 68a-70a).

The court of appeals held there was no error in the Tax Court's valuation analysis. However, it remanded the case to that court to consider whether ATAPCO's interest in another corporation resulted in duplicative adjustments (Pet. App. C 74a-75a).

ARGUMENT

1. This case involves only the factual question of the value of particular shares in a closely-held corporation for federal estate tax purposes. While the goal of the valuation process—determining what a willing buyer would pay and a willing seller would accept for the property—is a constant in valuation cases, factual variations require that particular valuation factors be employed on a case-by-case basis. See Treasury Regulations, Section 20.2031-2(f)(2) (26 C.F.R.).

In this case the process of valuation was complex because it involved shares of stock in a closely held corporation that, in turn, had substantial holdings in other corporations. The Tax Court adopted a valuation technique that first focused on the per-share value of ATAPCO's net assets and then discounted that preliminary figure to reflect

the various factors affecting marketability. This mathematical process is in accord with the valuation techniques employed by other courts. See, e.g., *Hamm v. Commissioner*, 325 F. 2d 934, 938 (C.A. 8), certiorari denied, 377 U.S. 993; *In re Nathan's Estate*, 166 F. 2d 422 (C.A. 9); *Schroeder v. Commissioner*, 13 T.C. 259; *Estate of Cruikshank v. Commissioner*, 9 T.C. 162; see Lowndes and Kramer, *Federal Estate and Gift Taxation* §18.22, nn. 55, 58 (3d ed., 1974), and accompanying text. Indeed, the discounts the Tax Court applied to reflect the minority status of the decedents' shareholdings and the absence of a ready market closely approximate those used in other cases involving minority interests in similar closely-held corporations. *Laird v. Commissioner* 38 B.T.A. 925, on remand from 85 F. 2d 598 (C.A. 3); *Obermer v. United States*, 238 F. Supp. 29 (D. Hawaii).

Petitioners argue (Pet. 8-9, 10) that the Tax Court erred in failing to discount ATAPCO's assets in the preliminary stages of the valuation process to their liquidation value before discounting the asset per share values derived—a requirement they contend that *Laird v. Commissioner, supra*, requires. But petitioners overlook the fact that the shares to be valued were the ATAPCO shares of the decedents. The willing buyer-willing seller test (see Section 20.2031-1(b) of the Treasury Regulations) applies only to valuation of those shares. The initial step in the valuation process, including the valuation of ATAPCO's assets, was simply preliminary. Thus, as long as the ultimate determination of the value of the decedents' ATAPCO shares was properly discounted to satisfy the willing buyer-willing seller test, it is irrelevant whether the preliminary valuation of the ATAPCO assets also satisfied that test.

Laird v. Commissioner, supra, is not to the contrary. That case does not hold that a corporation's assets must

first be valued at their liquidation value (including any discount) and that the per-share values derived from the asset values then again be discounted. To the contrary, the court in *Laird* required only that the trier of fact consider the market price of stock owned by the corporation and "all other factors having a bearing upon the value of the stock" (85 F. 2d at 600-601). Cf. Treasury Regulations, Section 20.2031-2(f) (Pet. App. E 79a).² Here, the Tax Court considered the preliminary discounts urged by petitioners but properly concluded that they were not justified because ATAPCO did not contemplate liquidation or sale of its assets. Cf. *Richardson v. Commissioner*, 151 F. 2d 102 (C.A. 2); *Estate of Cruikshank v. Commissioner*, 9 T.C. 162; *Estate of Huntington v. Commissioner*, 36 B.T.A. 698. See also Lowndes and Kramer, *supra*, at § 1822.

2. Petitioners further argue (Pet. 13-14, 17) that the Tax Court erroneously disregarded the stock market price in its preliminary assessment of ATAPCO's holdings in Crown Central Petroleum and that this aspect of the decision conflicts with *Amerada Hess Corp. v. Commissioner*, 517 F. 2d 75 (C.A. 3), certiorari denied, 423 U.S. 1037, and *Hazeltine Corp. v. Commissioner*, 89 F. 2d 513 (C.A. 3).

²Petitioners also assert that three trial court decisions (*Estate of Hecksher v. Commissioner*, 63 T.C. 485; *Obermer v. United States*, *supra*; *Bishop Trust Co. v. United States*, 42 A.F.T.R. 1221 (D. Hawaii) (Pet. 10) conflict with the decision below. In those cases, the courts found that potential capital gains or blockage ought to be taken into account in determining the per share value of a corporation's assets. Apart from the fact that a conflict with trial court decisions does not warrant resolution by this Court (see Rule 19(1)(b) of the Rules; Stern and Gressman, *Supreme Court Practice*, §4.8, pp. 161-163 (4th ed., 1969)), there is no conflict. Those cases merely hold that factors affecting the marketability of a corporation's assets may be considered in valuing the corporation's stock, especially when the corporation is in the process of liquidating those assets, as in *Estate of Hecksher*.

However, both *Amerada Hess* and *Hazeltine* recognize that there are circumstances when the stock market may not accurately reflect the value of stock. See *Amerada Hess*, *supra*, 517 F. 2d at 84; *Hazeltine*, *supra*, 89 F. 2d at 519. Here, the Tax Court concluded that the thin market for Crown shares on the relevant trading days, the control factor inherent in ATAPCO's holdings in Crown, the trend in market prices, and the market prices for eight comparable oil companies all indicated that the market price did not accurately reflect the value of the Crown shares. Under these circumstances, the Tax Court properly sought a more accurate guide for valuing the Crown shares.

3. Finally, petitioners argue (Pet. 16) that the decision in this case violates the "principle" established in *Ivan Allen Co. v. United States*, 422 U.S. 617, 629. There, the shares of publicly-traded stock held by the taxpayer-corporation were valued at "net realizable value." But in *Ivan Allen Co.*, the corporation's stockholdings were valued to determine whether it needed to accumulate current corporate earnings in order to meet the reasonable needs of the business or whether it was accumulating its earnings beyond the reasonable needs of the business. That inquiry was for the purpose of ascertaining whether the taxpayer's accumulations were in order to avoid the dividend tax on its shareholders so as to subject it to the accumulated earnings tax (Sections 531-537 of the Code). Since the taxpayer's marketable securities might be sold to meet its anticipated business needs and thus eliminate the need for accumulating current income, the Court held that the liquidation value, and not the cost, of the securities was the only relevant measure for those purposes.

Here, however, there is no indication that ATAPCO intended to liquidate any of its shareholdings. Indeed, petitioners' own expert testified that ATAPCO's shareholdings

should be retained (R. 85). *Ivan Allen Co.* is therefore distinguishable.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

MICHAEL L. PAUP,
STANLEY S. SHAW, JR.,
Attorneys.

OCTOBER 1976.

OCT 14 1976

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

—
No. 76-222
—

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, ET AL., *Petitioners*

v.

COMMISSIONER OF INTERNAL REVENUE

—
On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit
—

REPLY BRIEF FOR THE PETITIONERS
—

Of Counsel:

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

CABLE, McDANIEL, BOWIE
AND BOND
915 The Blaustein Building
Baltimore, Maryland 21201

CAROLYN E. AGGER
WALTER J. ROCKLER
LAURALEE A. MATTHEWS
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

JOHN S. McDANIEL, JR.
LAWRENCE A. KAUFMAN
915 The Blaustein Building
Baltimore, Maryland 21201
Attorneys for Petitioners

IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-222

ESTATE OF ALVIN THALHEIMER, RUTH B. ROSENBERG,
SURVIVING EXECUTRIX, ET AL., *Petitioners*

V.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fourth Circuit

REPLY BRIEF FOR THE PETITIONERS

ARGUMENT

1. The government misstates the nature of the questions presented for review. These are not factual questions. As this Court has stated before in reversing improper valuation decisions, "the question of what criterion should be employed for determining . . . 'value' . . . is a question of law." *Powers v. Commissioner*, 312 U.S. 259, 260 (1941).

The government employs words and phrases in an artfully ambiguous fashion and misconstrues the decisions below in an effort to imply that these decisions are consistent with the decision of the Third Circuit Court of Appeals in *Laird v. Commissioner*, 85 F.2d 598, 600 (3d Cir. 1936). Thus, the government claims that "the discounts the Tax Court applied to reflect the minority status of the decedents' shareholdings and the absence of a ready market closely approximate" the discounts used in the *Laird* case on remand and that the Third Circuit Court's decision in *Laird* is "not . . . contrary" to the decisions below. (Gov. Br. p. 5)¹ It is true that in *Laird* on remand, as in the instant cases, discounts for the factors of minority status in and lack of ready market for the stock in the closely-held corporation were applied. However, the government's description of *Laird* on remand fails to mention that additional discounts were also granted in that case to take account of the capital gains taxes and blockage which affected the value of underlying assets. These additional discounts were granted in *Laird* pursuant to the Third Circuit Court's mandate that "all factors" bearing on value must be given effect including blockage and other factors reducing the value of corporate assets, and that corporate assets consisting of large blocks of stock in other corporations could not be valued by simply multiplying the number of shares held by stock market prices.² The

¹ "Gov. Br." refers to the government's Brief in Opposition to the Petition for a Writ of Certiorari.

² The Third Circuit Court stated: "In valuing the shares of stock owned by these family corporations, the respondent [Commissioner] used the median between the high and low points at which these shares sold on the date of death of the decedent' . . . This . . . directly violated [the] . . . regulations. . . . The stock

decisions by the courts below, that discounts for blockage and other factors reducing the value of corporate assets could not be granted as a matter of law, and that the stocks of Standard Oil of Indiana and other corporations held by Atapeo *had* to be valued by multiplying the number of shares held by Atapeo by the stock market prices, created a direct conflict with the Third Circuit Court.

The government misleadingly implies that the factors depressing the value of Atapeo's underlying assets were somewhere taken into account by the courts below. Thus, the government declares that the Tax Court adopted a technique "to reflect the various factors affecting marketability" (Gov. Br. p. 5). Further, "as long as the ultimate determination of value . . . was properly discounted . . . it is irrelevant whether the preliminary valuation of the Atapeo assets also satisfied that test." (Gov. Br., p. 5.) The implication of these statements, that the restrictions which reduced the market value of Atapeo's assets were taken into account somewhere down the line by the Tax Court, is altogether incorrect. The *only* discounts the Tax Court considered were discounts for the lack of marketability of *minority interests* in the closely-held company itself. No account was taken anywhere of the factors which plainly reduce the value of Atapeo's assets.

in these two close corporations could not have been sold on the day of Mr. Laird's death Even if it could have been done . . . it would have driven the price of the duPont stock [held by the two corporations] down. . . . [T]he Commissioner . . . [may not] take the mean between the highest and the lowest selling prices of a comparatively small number of the shares of the stock which constitutes the . . . asset of the corporation, apply this price to the shares of stock, and thus find their speculative value and assess accordingly." 85 F.2d at 601.

The Tax Court's opinion, which the Fourth Circuit Court affirmed, states flatly:

"[P]etitioners' expert applied discounts to various assets for such factors as blockage, distribution expenses, investment restrictions, and/or capital gains tax. The record clearly shows that Atapeo is a diverse, viable going concern, and there is no evidence of a plan for its liquidation, voluntary or otherwise. Under these circumstances, the discounts applied by petitioners' expert . . . were inappropriate and improper [citations omitted]." App. A, 67a.

It was only after the Tax Court had so unequivocally noted that no consideration could be given to factors affecting the value of Atapeo's assets that it proceeded to consider the discounts to be applied because of lack of marketability of minority interests.

The government asserts that the decisions below are "not . . . contrary" to *Laird* because "the Tax Court considered the preliminary discounts urged by petitioners but properly concluded that they were not justified because Atapeo did not contemplate liquidation or sale of its assets." (Gov. Br. pp. 5-6). This assertion of consistency with *Laird* is utterly misleading. In *Laird*, there was no evidence or indication whatever of impending liquidation, yet the factors which the courts below regarded as legally "improper" to be recognized were *compelled* by the Third Circuit Court of Appeals to be not only considered but also given effect. Failure to grant discounts for these factors resulted in reversal in *Laird*.

The government does not contend that willing buyers and sellers would not consider the blockage, restric-

tions on sale, and trapped capital gains taxes which affect Atapeo's assets, in valuing Atapeo stock.³ Rather, the government asserts (Gov. Br., p. 5) that the willing buyer-willing seller test of value is somehow inapplicable because the parties and the courts below agreed to value Atapeo shares by a two-step process, first determining the asset value of Atapeo's stockholdings in other companies and then applying discounts for minority status and the lack of a ready market for the closely-held stock. The Regulations require that *all factors* which would affect a willing buyer and seller in setting a price be considered in valuing a decedent's stock. Treas. Regs. Sec. 20.2031-1(b). It is irrelevant whether such factors are considered at the stage of determining the asset value of the stock, or at some other stage in the valuation process. However, such factors must be considered at some point. The courts below held, in direct conflict with the Third Circuit Court's decision in *Laird*, that as a matter of law they could *not* consider or give effect to the blockage, restrictions on sale, and capital gains taxes which devalued Atapeo's assets, at any point in the valuation process.

2. The government asserts that the Tax Court made a valid finding of a "thin" market for Crown stock and sought a "more accurate guide" than market prices in valuing Atapeo's Crown shares. (Gov. Br., p. 7.) The record is totally devoid of evidence even

³ The SEC has expressly recognized that such factors *are* considered by willing buyers and sellers in setting market prices. See Pet. Cert. pp. 11-12.

suggesting "thinness."⁴ (Pet. Br. below, pp. 37-39).⁵ The Third Circuit case of *Amerada Hess Corp. v. Commissioner*, 517 F.2d 75 (3d Cir. 1975), *cert. denied*, 423 U.S. 869 (1975) requires that market prices which do not accurately reflect value are to be adapted by reference to specific adjusting factors. The Third Circuit has already repudiated valuations made without regard to the specific standards set forth in the regulations. (See Pet. Cert., pp. 14-15.) A reliance on book value, more than doubling the value established by substantial market trading, is arbitrary and reflects the use of an improper criterion in making the valuation.

⁴ The percentage trading volume of Crown stock was *greater* than that of stocks for which the Tax Court did use market prices in its valuation determination. The government asserts that market prices for "comparable" oil companies were utilized by the Tax Court in its value determination. (Gov. Br., p. 7.) Nothing in the record shows that the companies utilized were in any way comparable to Crown, or were experiencing any of Crown's difficulties. The mere fact that one company operates in the same industry as another does not make the two companies "comparable" for valuation purposes. See *Estate of D. J. Levenson v. Commissioner*, 282 F.2d 581 (3d Cir. 1960); *Russell v. United States*, 260 F. Supp. 493 (N.D. Ill. 1966); Rev. Rul. 59-60, Sec. 4.02(h), 1959-1 Cum. Bull. 237, 242. Similarly, there was no evidence that Atapco's control of Crown justified a premium for Atapco's stock given the difficulties Crown was experiencing. (Pet. Br. below pp. 37-41.)

⁵ "Pet. Br. below" refers to the Petitioners' Brief in the Fourth Circuit Court of Appeals.

CONCLUSION

For the reasons stated in the petition and in this reply brief, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Of Counsel:

ARNOLD & PORTER
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

CABLE, McDANIEL, BOWIE
AND BOND
915 The Blaustein Building
Baltimore, Maryland 21201

CAROLYN E. AGGER
WALTER J. ROCKLER
LAURALEE A. MATTHEWS
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

JOHN S. McDANIEL, JR.
LAWRENCE A. KAUFMAN
915 The Blaustein Building
Baltimore, Maryland 21201

Attorneys for Petitioners

October, 1976